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ACTS OF A GENERAL NATURE

PASSED BY THE

FIFTIETH GENERAL ASSEMBLY

OF THE

STATE OF OHIO:

(First Session under the Constitution of 1851:)

AND HELD IN THE CITY OF COLUMBUS,

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NOVEMBER 15, 1852:

AND IN THE FIFTY-FIRST YEAR OF SAID STATE.

VOL. LI.

COLUMBUS:
OSGOOD & BLAKE, PRINTERS.
1853.

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CONSTITUTION

OF THE STATE OF OHIO.

We, the people of the State of Ohio, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare, do establish this Constitution.

ARTICLE I.

BILL OF RIGHTS.

SECTION 1. All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Right to freedom and protection of property.

SEC. 2. All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

Right to alter, reform, or abolish government, and repeal special privileges.

SEC. 3. The people have the right to assemble together, in a peaceable manner, to consult for their common good; to instruct their Representatives; and to petition the General Assembly for the redress of grievances.

Of the right to assemble.

SEC. 4. The people have the right to bear arms for their defence and security; but standing armies, in time of peace, are dangerous to liberty, and shall not be kept up; and the military shall be in strict subordination to the civil power.

Of bearing arms; standing armies; subordination of military power.

SEC. 5. The right of trial by jury shall be inviolate.

Trial by jury.

SEC. 6. There shall be no slavery in this State; nor involuntary servitude, unless for the punishment of crime.

Of slavery, and involuntary servitude.

Of the rights of
conscience.

SEC. 7. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

The necessity of
religion and
knowledge.

Of the writ of
habeas corpus.

SEC. 8. The privilege of the writ of habeas corpus shall not be suspended, unless, in cases of rebellion or invasion, the public safety require it.

Bailable of-
fences.

SEC. 9. All persons shall be bailable by sufficient sureties, except for capital offences where the proof is evident, or the presumption great. Excessive bail shall not be required; nor excessive fines imposed; nor cruel and unusual punishments inflicted.

Of bail, fine and
punishment.

Of the trial of
accused persons
and their rights.

SEC. 10. Except in cases of impeachment, and cases arising in the army and navy, or in the militia when in actual service in time of war or public danger, and in cases of petit larceny and other inferior offences, no person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury. In any trial, in any court, the party accused shall be allowed to appear and defend in person and with counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process to procure the attendance of witnesses in his behalf, and a speedy public trial by an impartial jury of the county or district, in which the offence is alleged to have been committed; nor shall any person be compelled, in any criminal case, to be a witness against himself, or be twice put in jeopardy for the same offence.

Of the freedom
of speech and of
the press.

SEC. 11. Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of the right; and no law shall be passed to restrain or abridge the liberty of speech, or of the press. In all criminal prosecutions for libel, the truth may be given in evidence to the jury, and if it shall appear to the jury, that the matter charged as libelous is true, and was published with good motives, and for justifiable ends, the party shall be acquitted.

Of libels.

SEC. 12. No person shall be transported out of the State, for any offence committed within the same; and no conviction shall work corruption of blood, or forfeiture of estate.

Transportation,
&c., for crime.

SEC. 13. No soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor, in time of war, except in the manner prescribed by law.

Of quartering
troops.

SEC. 14. The right of the people to be secure in their persons, houses, papers, and possessions, against unreasonable searches and seizures shall not be violated; and no warrant shall issue, but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person and things to be seized.

Search war-
rants and gene-
ral warrants.

SEC. 15. No person shall be imprisoned for debt in any civil action, on mesne or final process, unless in cases of fraud.

No imprison-
ment for debt.

SEC. 16. All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law; and justice administered without denial or delay.

Of redress in
courts.

SEC. 17. No hereditary emoluments, honors, or privileges, shall ever be granted or conferred by this State.

Hereditary priv-
ileges, &c.

SEC. 18. No power of suspending laws shall ever be exercised, except by the General Assembly.

Suspension of
laws.

SEC. 19. Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Of the inviola-
bility of private
property.

SEC. 20. This enumeration of rights shall not be construed to impair or deny others retained by the people; and all powers, not herein delegated, remain with the people.

Powers re-
served to the
people.

ARTICLE II.

LEGISLATIVE.

SECTION 1. The Legislative power of this State shall be vested in a General Assembly, which shall consist of a Senate, and House of Representatives.

In whom legis-
lative power is
vested.

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| When chosen. | SEC. 2. Senators and Representatives shall be elected biennially, by the electors in the respective counties or districts, on the second Tuesday of October; their term of office shall commence on the first day of January next thereafter, and continue two years. |
| Residence. | SEC. 3. Senators and Representatives shall have resided in their respective counties, or districts, one year next preceding their election, unless they shall have been absent on the public business of the United States, or of this State. |
| Eligibility. | SEC. 4. No person holding office under the authority of the United States, or any lucrative office under the authority of this State, shall be eligible to, or have a seat in, the General Assembly; but this provision shall not extend to township officers, justices of the peace, notaries public, or officers of the militia. |
| Who shall not hold office. | SEC. 5. No person hereafter convicted of an embezzlement of the public funds, shall hold any office in this State; nor shall any person, holding public money for disbursement, or otherwise, have a seat in the General Assembly, until he shall have accounted for, and paid such money into the treasury. |
| Powers of each House. | SEC. 6. Each House shall be judge of the election, returns, and qualifications, of its own members; a majority of all the members elected to each House, shall be a quorum to do business; but a less number may adjourn from day to day, and compel the attendance of absent members, in such manner, and under such penalties, as shall be prescribed by law. |
| Organization of House of Representatives. | SEC. 7. The mode of organizing the House of Representatives, at the commencement of each regular session, shall be prescribed by law. |
| Rules and right of punishment and expulsion. | SEC. 8. Each House, except as otherwise provided in this constitution, shall choose its own officers, may determine its own rules of proceeding, punish its members for disorderly conduct; and, with the concurrence of two-thirds, expel a member, but not the second time for the same cause; and, shall have all other powers, necessary to provide for its safety, and the undisturbed transaction of its business. |
| Journal and yeas and nays. | SEC. 9. Each House shall keep a correct journal of its proceedings, which shall be published. At the desire of any two members, the yeas and nays shall be entered upon the journal; and, on the passage of every bill, in either House, the vote shall be taken by yeas and nays, and entered upon the journal; and no law shall be passed, in either House, without the concurrence of a majority of all the members elected thereto. |
| Right of members to protest. | SEC. 10. Any member of either House shall have the right to protest against any act, or resolution thereof; and such protest, and |

the reasons therefor, shall, without alteration, commitment, or delay, be entered upon the journal.

SEC. 11. All vacancies which may happen in either House shall, for the unexpired term, be filled by election, as shall be directed by law.

Vacancies in either House, how filled.

SEC. 12. Senators and Representatives, during the session of the General Assembly, and in going to, and returning from the same, shall be privileged from arrest, in all cases, except treason, felony, or breach of the peace; and for any speech, or debate, in either House, they shall not be questioned elsewhere.

Privilege of members from arrest, and of speech.

SEC. 13. The proceedings of both Houses shall be public, except in cases which, in the opinion of two-thirds of those present, require secrecy.

When session to be public.

SEC. 14. Neither House shall, without the consent of the other, adjourn for more than two days, Sundays excluded; nor to any other place than that, in which the two Houses shall be in session.

Power of adjournment.

SEC. 15. Bills may originate in either House; but may be altered, amended, or rejected in the other.

Where bills shall originate.

SEC. 16. Every bill shall be fully and distinctly read, on three different days, unless, in case of urgency, three-fourths of the House, in which it shall be pending, shall dispense with this rule. No bill shall contain more than one subject, which shall be clearly expressed in its title; and no law shall be revived, or amended, unless the new act contain the entire act revived, or the section or sections amended; and the section, or sections, so amended, shall be repealed.

Bills to be read three times.

Not to contain more than one subject.

Acts revived or amended.

SEC. 17. The presiding officer of each House shall sign, publicly in the presence of the House over which he presides, while the same is in session, and capable of transacting business, all bills and joint resolutions passed by the General Assembly.

To be signed by presiding officer.

SEC. 18. The style of the laws of this State shall be, "*Be it enacted by the General Assembly of the State of Ohio.*"

Style of laws.

SEC. 19. No Senator or Representative shall, during the term, for which he shall have been elected, or for one year thereafter, be appointed to any civil office under this State, which shall be created or the emoluments of which, shall have been increased, during the term, for which he shall have been elected.

Exclusion from office.

SEC. 20. The General Assembly, in cases not provided for in this constitution, shall fix the term of office and the compensation of all officers; but no change therein shall affect the salary of any officer during his existing term, unless the office be abolished.

Term of office, and compensation of officers in certain cases.

Contested elections.

Sec. 21. The General Assembly shall determine, by law, before what authority, and in what manner, the trial of contested elections shall be conducted.

Appropriations.

Sec. 22. No money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law ; and no appropriation shall be made for a longer period than two years.

Impeachment, how instituted, and conducted.

Sec. 23. The House of Representatives shall have the sole power of impeachment, but a majority of the members elected must concur therein. Impeachments shall be tried by the Senate ; and the Senators, when sitting for that purpose, shall be upon oath or affirmation to do justice according to law and evidence. No person shall be convicted without the concurrence of two-thirds of the Senators.

Who liable to impeachment and punishment.

Sec. 24. The Governor, Judges, and all State officers, may be impeached for any misdemeanor in office ; but judgment shall not extend further than removal from office, and disqualification to hold any office, under the authority of this State. The party impeached, whether convicted or not, shall be liable to indictment, trial, and judgment, according to law.

When session to commence.

Sec. 25. All regular sessions of the General Assembly shall commence on the first Monday of January, biennially. The first session, under this constitution, shall commence on the first Monday of January, one thousand eight hundred and fifty-two.

What laws to have a uniform operation.

Sec. 26. All laws, of a general nature, shall have a uniform operation throughout the State ; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.

Election and appointment of officers and the filling of vacancies.

Sec. 27. The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law ; but no appointing power shall be exercised by the General Assembly, except as prescribed in this constitution, and in the election of United States Senators ; and in these cases, the vote shall be taken "*viva voce*."

Vote for United States Senator to be viva voce. Retro-active laws.

Sec. 28. The General Assembly shall have no power to pass retro-active laws, or laws impairing the obligation of contracts ; but may, by general laws, authorize courts to carry into effect, upon such terms as shall be just and equitable, the manifest intention of parties, and officers, by curing omissions, defects, and errors, in instruments and proceedings, arising out of their want of conformity with the laws of this State.

SEC. 29. No extra compensation shall be made to any officer, public agent, or contractor, after the service shall have been rendered, or the contract entered into; nor, shall any money be paid, on any claim, the subject matter of which shall not have been provided for by pre-existing law, unless such compensation, or claim, be allowed by two-thirds of the members elected to each branch of the General Assembly.

No extra compensation.

SEC. 30. No new county shall contain less than four hundred square miles of territory, nor, shall any county be reduced below that amount; and all laws creating new counties, changing county lines, or removing county seats, shall, before taking effect, be submitted to the electors of the several counties to be affected thereby, at the next general election after the passage thereof, and be adopted by a majority of all the electors voting at such election, in each of said counties; but any county now or hereafter containing one hundred thousand inhabitants, may be divided, whenever a majority of the voters, residing in each of the proposed divisions, shall approve of the law passed for that purpose; but, no town or city within the same, shall be divided, nor, shall either of the divisions contain less than twenty thousand inhabitants.

New counties.

SEC. 31. The members and officers of the General Assembly shall receive a fixed compensation, to be prescribed by law, and no other allowance or perquisites, either in the payment of postage or otherwise; and no change in their compensation shall take effect during their term of office.

Compensation of members and officers of General Assembly.

SEC. 32. The General Assembly shall grant no divorce, nor, exercise any judicial power, not herein expressly conferred.

Divorces and judicial power.

ARTICLE III.

EXECUTIVE.

SEC. 1. The Executive Department shall consist of a Governor, Lieutenant Governor, Secretary of State, Auditor, Treasurer, and an Attorney General, who shall be chosen by the electors of the State, on the second Tuesday of October, and at the places of voting for members of the General Assembly.

Executive Department.

SEC. 2. The Governor, Lieutenant Governor, Secretary of State, Treasurer, and Attorney General shall hold their offices for two years; and the Auditor for four years. Their terms of office shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualified.

Term of office.

SEC. 3. The returns of every election for the officers, named in the foregoing section, shall be sealed up and transmitted to the seat

Election returns.

of Government, by the returning officers, directed to the President of the Senate, who, during the first week of the session, shall open and publish them, and declare the result, in the presence of a majority of the members of each House of the General Assembly. The person having the highest number of votes shall be declared duly elected; but if any two or more shall be highest, and equal in votes, for the same office, one of them shall be chosen by the joint vote of both Houses.

Same subject.

SEC. 4. Should there be no session of the General Assembly in January next after an election for any of the officers aforesaid, the returns of such election shall be made to the Secretary of State, and opened, and the result declared by the Governor, in such manner as may be provided by law.

Executive power vested in Governor.

SEC. 5. The Supreme executive power of this State shall be vested in the Governor.

He may require written information &c.

SEC. 6. He may require information, in writing, from the officers in the executive department, upon any subject relating to the duties of their respective offices; and shall see that the laws are faithfully executed.

He shall recommend measures, &c.

SEC. 7. He shall communicate at every session, by message, to the General Assembly, the condition of the State, and recommend such measures as he shall deem expedient.

When and how he may convene the General Assembly.

SEC. 8. He may, on extraordinary occasions, convene the General Assembly by proclamation, and shall state to both Houses, when assembled, the purpose for which they have been convened.

When he may adjourn the General Assembly.

SEC. 9. In case of disagreement between the two Houses, in respect to the time of adjournment, he shall have power to adjourn the General Assembly to such time as he may think proper, but not beyond the regular meetings thereof.

Commander-in-chief of militia.

SEC. 10. He shall be commander-in-chief of the military and naval forces of the State, except when they shall be called into the service of the United States.

May grant reprieves, commutations and pardons.

SEC. 11. He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offences, except treason and cases of impeachment, upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law. Upon conviction for treason, he may suspend the execution of the sentence, and report the case to the General Assembly, at its next meeting, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant a further reprieve. He shall communicate to the General Assembly, at every regular session, each case

of reprieve, commutation or pardon granted, stating the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with his reasons therefor.

Sec. 12. There shall be a seal of the State, which shall be kept by the Governor, and used by him officially; and shall be called "The Great Seal of the State of Ohio."

Seal of State,
and by whom
kept.

Sec. 13. All grants and commissions shall be issued in the name, and by the authority, of the State of Ohio; sealed with the Great Seal; signed by the Governor, and countersigned by the Secretary of State.

How grants and
commissions is-
sued.

Sec. 14. No member of Congress, or other person holding office under the authority of this State, or of the United States, shall execute the office of Governor, except as herein provided.

Who ineligible
for Governor.

Sec. 15. In case of the death, impeachment, resignation, removal, or other disability of the Governor, the powers and duties of the office, for the residue of the term, or until he shall be acquitted, or the disability removed, shall devolve upon the Lieutenant Governor.

Who shall fill
his place when
vacancy occurs.

Sec. 16. The Lieutenant Governor shall be President of the Senate, but shall vote only when the Senate is equally divided; and in case of his absence, or impeachment, or when he shall exercise the office of Governor, the Senate shall choose a President *pro tempore*.

Lieutenant Gov-
ernor.

Sec. 17. If the Lieutenant Governor, while executing the office of Governor, shall be impeached, displaced, resign or die, or otherwise become incapable of performing the duties of the office, the President of the Senate shall act as Governor, until the vacancy is filled, or the disability removed; and if the President of the Senate, for any of the above causes, shall be rendered incapable of performing the duties pertaining to the office of Governor, the same shall devolve upon the Speaker of the House of Representatives.

If vacancy shall
occur while ex-
ecuting the of-
fice of Gover-
nor, who shall
act.

Sec. 18. Should the office of Auditor, Treasurer, Secretary, or Attorney General, become vacant, for any of the causes specified in the fifteenth section of this article, the Governor shall fill the vacancy until the disability is removed, or a successor elected and qualified. Every such vacancy shall be filled by election, at the first general election that occurs more than thirty days after it shall have happened; and the person chosen shall hold the office for the full term fixed in the second section of this article.

What vacancies
Governor to fill.

Sec. 19. The officers mentioned in this article shall, at stated times, receive for their services, a compensation to be established by law, which shall neither be increased nor diminished during the period for which they shall have been elected.

Compensation.

Officers to report to Governor, and when.

SEC. 20. The officers of the executive department, and of the public State Institutions shall, at least five days preceding each regular session of the General Assembly, severally report to the Governor, who shall transmit such reports, with his message, to the General Assembly.

ARTICLE IV.

JUDICIAL.

In whom judicial power vested.

SEC. 1. The judicial power of the State shall be vested in a supreme court, in district courts, courts of common pleas, courts of probate, justices of the peace, and such other courts, inferior to the supreme court, in one or more counties, as the General Assembly, may, from time to time establish.

The Supreme court.

SEC. 2. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, or to pronounce a decision. It shall have original jurisdiction in quo warranto, mandamus, habeas corpus, and procedendo, and such appellate jurisdiction as may be provided by law. It shall hold at least one term in each year, at the seat of government, and such other terms, at the seat of government, or elsewhere, as may be provided by law. The Judges of the supreme court shall be elected, by the electors of the State at large.

The common pleas.

SEC. 3. The State shall be divided into nine common pleas districts, of which the county of Hamilton shall constitute one, of compact territory, and bounded by county lines; and each of said districts, consisting of three or more counties, shall be subdivided into three parts, of compact territory, bounded by county lines, and as nearly equal in population as practicable; in each of which, one Judge of the court of common pleas for said district, and residing therein, shall be elected by the electors of said subdivision. Courts of common pleas shall be held, by one or more of these Judges, in every county in the district, as often as may be provided by law; and more than one court, or sitting thereof, may be held at the same time in each district.

Their jurisdiction.

SEC. 4. The jurisdiction of the courts of common pleas, and of the Judges thereof, shall be fixed by law.

District courts.

SEC. 5. District courts shall be composed of the Judges of the court of common pleas of the respective districts, and one of the Judges of the supreme court, any three of whom shall be a quorum, and shall be held in each county therein, at least once in each year;

but if it shall be found inexpedient to hold such court annually, in each county, of any district, the General Assembly may, for such district, provide that said court shall hold at least three annual sessions therein, in not less than three places : Provided, that the General Assembly may, by law, authorize the Judges of each district to fix the times of holding the courts therein.

Sec. 6. The district court shall have like original jurisdiction with the supreme court, and such appellate jurisdiction as may be provided by law.

Their jurisdiction.

Sec. 7. There shall be established in each county, a Probate court, which shall be a court of record, open at all times, and holden by one Judge, elected by the voters of the county, who shall hold his office for the term of three years, and shall receive such compensation, payable out of the county treasury, or by fees, or both, as shall be provided by law.

Probate courts.

Sec. 8. The Probate court shall have jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, and such jurisdiction in habeas corpus, the issuing of marriage licenses, and for the sale of land by executors, administrators and guardians, and such other jurisdiction, in any county, or counties, as may be provided by law.

Their jurisdiction.

Sec. 9. A competent number of justices of the peace shall be elected, by the electors, in each township in the several counties. Their term of office shall be three years, and their powers and duties shall be regulated by law.

Justices of the Peace.

Sec. 10. All Judges, other than those provided for in this constitution, shall be elected by the electors of the judicial district for which they may be created, but not for a longer term of office than five years.

Other judges.

Sec. 11. The Judges of the Supreme Court shall, immediately after the first election under this constitution, be classified by lot, so that one shall hold for the term of one year, one for two years, one for three years, one for four years, and one for five years ; and, at all subsequent elections, the term of each of said Judges shall be for five years.

Classification of Supreme judges.

Sec. 12. The Judges of the courts of common pleas shall, while in office, reside in the district for which they are elected, and their term of office shall be for five years.

Common Pleas judges, their term of office and residence.

Sec. 13. In case the office of any Judge shall become vacant, before the expiration of the regular term for which he was elected, the vacancy shall be filled by appointment by the Governor, until a

Vacancies, how filled.

successor is elected and qualified ; and such successor shall be elected for the unexpired term, at the first annual election that occurs more than thirty days after the vacancy shall have happened.

Compensation
of judges.

Sec. 14. The Judges of the supreme court, and of the court of common pleas, shall, at stated times, receive, for their services, such compensation as may be provided by law, which shall not be diminished, or increased during their term of office ; but they shall receive no fees or perquisites, nor hold any other office of profit or trust, under the authority of this State, or the United States. All votes for either of them, for any elective office, except a judicial office, under the authority of this State, given by the General Assembly, or the people, shall be void.

Ineligible to
other offices.

Number of judges
may be increased or diminished,
districts altered,
and other courts
established.

Sec. 15. The General Assembly may increase, or diminish, the number of the Judges of the supreme court, the number of the districts of the court of common pleas, the number of Judges in any district, change the districts, or the subdivisions thereof, or establish other courts, whenever two-thirds of the members elected to each House shall concur therein ; but no such change, addition, or diminution, shall vacate the office of any judge.

Clerks of courts.

Sec. 16. There shall be elected in each county, by the electors thereof, one clerk of the court of common pleas, who shall hold his office for the term of three years, and until his successor shall be elected and qualified. He shall, by virtue of his office, be clerk of all other courts of record held therein ; but, the General Assembly may provide, by law, for the election of a clerk, with a like term of office, for each or any other of the courts of record, and may authorize the Judge of the Probate Court to perform the duties of clerk for his court, under such regulations as may be directed by law. Clerks of Courts shall be removable for such cause, and in such manner as shall be prescribed by law.

Judges removable.

Sec. 17. Judges may be removed from office, by concurrent resolution of both Houses of the General Assembly, if two-thirds of the members, elected to each House, concur therein ; but, no such removal shall be made, except upon complaint, the substance of which shall be entered on the journal, nor, until the party charged shall have had notice thereof, and an opportunity to be heard.

Powers and jurisdiction.

Sec. 18. The several Judges of the supreme court, of the common pleas, and of such other courts as may be created, shall, respectively, have and exercise such power and jurisdiction, at chambers, or otherwise, as may be directed by law.

Courts of Conciliation.

Sec. 19. The General Assembly may establish courts of Conciliation, and prescribe their powers and duties ; but such courts

shall not render final judgment in any case, except upon submission, by the parties, of the matter in dispute, and their agreement to abide such judgment.

Sec. 20. The style of all process shall be, "The State of Ohio;" all prosecutions shall be carried on, in the name, and by the authority, of the State of Ohio; and all indictments shall conclude, "against the peace and dignity of the State of Ohio."

Style of process,
prosecution and
indictment.

ARTICLE V.

ELECTIVE FRANCHISE.

Sec. 1. Every white male citizen of the United States, of the age of twenty-one years, who shall have been a resident of the State one year next preceding the election, and of the county, township, or ward, in which he resides, such time as may be provided by law, shall have the qualifications of an elector, and be entitled to vote at all elections.

Who may vote.

Sec. 2. All elections shall be by ballot.

By ballot.

Sec. 3. Electors, during their attendance at elections, and in going to, and returning therefrom, shall be privileged from arrest, in all cases, except treason, felony, and breach of the peace.

Voters, when
privileged from
arrest.

Sec. 4. The General Assembly shall have power to exclude from the privilege of voting, or of being eligible to office, any person convicted of bribery, perjury, or other infamous crime.

Forfeiture of
elective fran-
chise.

Sec. 5. No person in the Military, Naval, or Marine service of the United States, shall, by being stationed in any garrison, or military, or naval station, within the State, be considered a resident of this State.

Persons not
considered resi-
dents of the
State.

Sec. 6. No idiot, or insane person, shall be entitled to the privileges of an elector.

Idiots or insane
persons.

ARTICLE VI.

EDUCATION.

Sec. 1. The principal of all funds, arising from the sale, or other disposition of lands, or other property, granted or entrusted to this State for educational and religious purposes, shall forever be preserved inviolate, and undiminished; and, the income arising therefrom, shall be faithfully applied to the specific objects of the original grants, or appropriations.

Funds for edu-
cational and re-
ligious purposes

School funds.

SEC. 2. The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

ARTICLE VII.

PUBLIC INSTITUTIONS.

Insane, Blind,
and Deaf and
Dumb.

SEC. 1. Institutions for the benefit of the insane, blind, and deaf and dumb, shall always be fostered and supported by the State; and be subject to such regulations as may be prescribed by the General Assembly.

Directors of
Penitentiary,
Trustees of Be-
nevolent and
other State In-
stitutions, how
appointed.

SEC. 2. The directors of the Penitentiary shall be appointed or elected in such manner as the General Assembly may direct; and the trustees of the benevolent, and other State institutions, now elected by the General Assembly, and of such other State Institutions as may be hereafter created, shall be appointed by the Governor, by and with the advice and consent of the Senate; and, upon all nominations made by the Governor, the question shall be taken by yeas and nays, and entered upon the journals of the Senate.

Vacancies, how
filled.

SEC. 3. The Governor shall have power to fill all vacancies that may occur in the offices aforesaid, until the next session of the General Assembly, and, until a successor to his appointee shall be confirmed and qualified.

ARTICLE VIII.

PUBLIC DEBT AND PUBLIC WORKS.

Public debt.

SEC. 1. The State may contract debts, to supply casual deficits or failures in revenues, or to meet expenses not otherwise provided for; but the aggregate amount of such debts, direct and contingent, whether contracted by virtue of one or more acts of the General Assembly, or at different periods of time, shall never exceed seven hundred and fifty thousand dollars; and the money, arising from the creation of such debts, shall be applied to the purpose for which it was obtained, or to repay the debts so contracted, and to no other purpose whatever.

SEC. 2. In addition to the above limited power, the State may contract debts to repel invasion, suppress insurrection, defend the State in war, or to redeem the present outstanding indebtedness of the State: but the money, arising from the contracting of such debts, shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever; and all debts, incurred to redeem the present outstanding indebtedness of the State, shall be so contracted as to be payable by the sinking fund, hereinafter provided for, as the same shall accumulate.

Additional debt,
and for what
purposes.

SEC. 3. Except the debts above specified in sections one and two of this article, no debt whatever shall hereafter be created by, or on behalf of the State.

The State to
create no other
debt.

SEC. 4. The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the State ever hereafter become a joint owner, or stockholder, in any company or association in this State, or elsewhere, formed for any purpose whatever.

Credit of State.

The State shall
not become
joint owner or
stockholder.

SEC. 5. The State shall never assume the debts of any county, city, town, or township, or of any corporation whatever, unless such debt shall have been created to repel invasion, suppress insurrection, or defend the State in war.

No assumption
of debts by the
State.

SEC. 6. The General Assembly shall never authorize any county, city, town, or township, by vote of its citizens, or otherwise, to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or loan its credit to, or in aid of, any such company, corporation, or association.

Counties, cities,
towns, or town-
ships, not au-
thorized to be-
come stockhol-
ders, &c.

SEC. 7. The faith of the State being pledged for the payment of the public debt, in order to provide therefor, there shall be created a sinking fund, which shall be sufficient to pay the accruing interest on such debt, and, annually, to reduce the principal thereof, by a sum not less than one hundred thousand dollars, increased yearly, and each and every year, by compounding, at the rate of six per cent. per annum. The said sinking fund shall consist, of the net annual income of the public works and stocks owned by the State, of any other funds or resources that are, or may be, provided by law, and of such further sum, to be raised by taxation, as may be required for the purposes aforesaid.

Sinking Fund.

SEC. 8. The Auditor of State, Secretary of State, and Attorney General, are hereby created a board of commissioners, to be styled, "The Commissioners of the Sinking Fund."

The Commis-
sioners of the
Sinking Fund.

SEC. 9. The commissioners of the sinking fund shall, immediately preceding each regular session of the General Assembly, make an estimate of the probable amount of the fund, provided for in the

Their biennial
report.

seventh section of this article, from all sources except from taxation, and report the same, together with all their proceedings relative to said fund and the public debt, to the Governor, who shall transmit the same with his regular message, to the General Assembly; and the General Assembly shall make all necessary provision for raising and disbursing said sinking fund, in pursuance of the provisions of this article.

Application of
Sinking Fund.

SEC. 10. It shall be the duty of said Commissioners faithfully to apply said fund, together with all moneys that may be, by the General Assembly, appropriated to that object, to the payment of the interest, as it becomes due, and the redemption of the principal of the public debt of the State, excepting only the school and trust funds held by the State.

Semi annual re-
port.

SEC. 11. The said Commissioners shall, semi-annually, make a full and detailed report of their proceedings to the Governor, who shall, immediately, cause the same to be published, and shall also communicate the same to the General Assembly, forthwith, if it be in session, and if not, then at its first session after such report shall be made.

Board of Public
Works.

SEC. 12. So long as this State shall have public works which require superintendence, there shall be a Board of Public Works, to consist of three members, who shall be elected by the people, at the first general election after the adoption of this Constitution, one for the term of one year, one for the term of two years, and one for the term of three years; and one member of said Board shall be elected annually thereafter, who shall hold his office for three years.

Their powers,
duties, and com-
pensation.

SEC. 13. The powers and duties of said Board of Public Works, and its several members, and their compensation, shall be such as now are, or may be prescribed by law.

ARTICLE IX.

MILITIA.

Who shall per-
form military
duty.

SEC. 1. All white male citizens, residents of this State, being eighteen years of age, and under the age of forty-five years, shall be enrolled in the militia, and perform military duty, in such manner, not incompatible with the Constitution and laws of the United States, as may be prescribed by law.

What officers to
be elected, and
by whom.

SEC. 2. Majors General, Brigadiers General, Colonels, Lieutenant Colonels, Majors, Captains, and Subalterns, shall be elected by the persons subject to military duty, in their respective districts.

Sec. 3. The Governor shall appoint the Adjutant General, Quarter Master General, and such other staff officers, as may be provided for by law. Majors General, Brigadiers General, Colonels, or Commandants of Regiments, Battalions, or Squadrons, shall, severally, appoint their staff, and Captains shall appoint their non-commissioned officers and musicians. Same subject.

Sec. 4. The Governor shall commission all officers of the line and staff, ranking as such ; and shall have power to call forth the Militia, to execute the laws of the State, to suppress insurrection, and repel invasion. Governor to commission officers, and have power to call forth the militia.

Sec. 5. The General Assembly shall provide, by law, for the protection and safe keeping of the public arms. Public arms.

ARTICLE X.

COUNTY AND TOWNSHIP ORGANIZATIONS.

Sec. 1. The General Assembly shall provide, by law, for the election of such county and township officers as may be necessary. County and township officers.

Sec. 2. County officers shall be elected on the second Tuesday of October, until otherwise directed by law, by the qualified electors of each county, in such manner, and for such term, not exceeding three years, as may be provided by law. County officers, when elected.

Sec. 3. No person shall be eligible to the office of Sheriff, or County Treasurer, for more than four years, in any period of six years. Eligibility of sheriff and treasurer.

Sec. 4. Township officers shall be elected on the first Monday of April, annually, by the qualified electors of their respective townships, and shall hold their offices for one year, from the Monday next succeeding their election, and until their successors are qualified. Township officers, when elected.

Sec. 5. No money shall be drawn from any county or township treasury, except by authority of law. County and township treasures.

Sec. 6. Justices of the peace, and county and township officers, may be removed, in such manner and for such cause, as shall be prescribed by law. What officers may be removed.

Sec. 7. The Commissioners of Counties, the Trustees of Townships, and similar boards, shall have such power of local taxation, for police purposes, as may be prescribed by law. Local taxation.

ARTICLE XI.

APPORTIONMENT.

Apportionment
for members of
the General As-
sembly.

SEC. 1. The apportionment of this State for members of the General Assembly, shall be made every ten years, after the year one thousand eight hundred and fifty-one, in the following manner: The whole population of the State, as ascertained by the federal census, or in such other mode as the General Assembly may direct, shall be divided by the number "One Hundred," and the quotient shall be the ratio of representation in the House of Representatives, for ten years next succeeding such apportionment.

Ratio of repre-
sentation in
House.

Same subject.

SEC. 2. Every county, having a population equal to one-half of said ratio, shall be entitled to one Representative; every county, containing said ratio, and three-fourths over, shall be entitled to two Representatives; every county, containing three times said ratio, shall be entitled to three Representatives: and so on, requiring after the first two, an entire ratio for each additional Representative.

Same subject.

SEC. 3. When any county shall have a fraction above the ratio, so large, that being multiplied by five, the result will be equal to one or more ratios, additional Representatives shall be apportioned for such ratios, among the several sessions of the decennial period, in the following manner: If there be only one ratio, a Representative shall be allotted to the fifth session of the decennial period; if there are two ratios, a Representative shall be allotted to the fourth and third sessions, respectively; if three, to the third, second, and first sessions, respectively; if four, to the fourth, third, second, and first sessions, respectively.

Same subject.

SEC. 4. Any county, forming with another county or counties, a Representative district, during one decennial period, if it have acquired sufficient population at the next decennial period, shall be entitled to a separate representation, if there shall be left, in the district from which it shall have been separated, a population sufficient for a Representative; but no such change shall be made, except at the regular decennial period for the apportionment of Representatives.

Same subject.

SEC. 5. If, in fixing any subsequent ratio, a county, previously entitled to a separate representation, shall have less than the number required by the new ratio for a Representative, such county shall be attached to the county adjoining it, having the least number of inhabitants; and the representation of the district, so formed, shall be determined as herein provided.

SEC. 6. The ratio for a Senator shall, forever hereafter, be ascertained, by dividing the whole population of the State, by the number thirty-five.

Ratio for a Senator.

SEC. 7. The State is hereby divided into thirty-three Senatorial districts, as follows: The county of Hamilton shall constitute the first Senatorial district; the counties of Butler and Warren, the second; Montgomery and Preble, the third; Clermont and Brown, the fourth; Greene, Clinton and Fayette, the fifth; Ross and Highland, the sixth; Adams, Pike, Scioto and Jackson, the seventh; Lawrence, Gallia, Meigs and Vinton, the eighth; Athens, Hocking and Fairfield, the ninth; Franklin, and Pickaway, the tenth; Clark, Champaign and Madison, the eleventh; Miami, Darke and Shelby, the twelfth; Logan, Union, Marion and Hardin, the thirteenth; Washington and Morgan, the fourteenth; Muskingum and Perry, the fifteenth; Delaware and Licking, the sixteenth; Knox and Morrow, the seventeenth; Coshocton and Tuscarawas, the eighteenth; Guernsey and Monroe, the nineteenth; Belmont and Harrison, the twentieth; Carroll and Stark, the twenty-first; Jefferson and Columbiana, the twenty-second; Trumbull and Mahoning, the twenty-third; Ashtabula, Lake and Geauga, the twenty-fourth; Cuyahoga, the twenty-fifth; Portage and Summit, the twenty-sixth; Medina and Lorain, the twenty-seventh; Wayne and Holmes, the twenty-eighth; Ashland and Richland, the twenty-ninth; Huron, Erie, Sandusky and Ottawa, the thirtieth; Seneca, Crawford and Wyandot, the thirty-first; Mercer, Auglaize, Allen, Vanwert, Paulding, Defiance and Williams, the thirty-second; and Hancock, Wood, Lucas, Fulton, Henry and Putnam, the thirty-third: For the first decennial period, after the adoption of this constitution, each of said districts shall be entitled to one Senator, except the first district, which shall be entitled to three Senators.

Senatorial districts.

SEC. 8. The same rules shall be applied, in apportioning the fractions of Senatorial districts, and in annexing districts, which may hereafter have less than three-fourths of a Senatorial ratio, as are applied to Representative districts.

Same subject

SEC. 9. Any county forming part of a Senatorial District, having acquired a population equal to a full Senatorial ratio, shall be made a separate Senatorial district, at any regular decennial apportionment, if a full Senatorial ratio shall be left in the district from which it shall be taken.

Same subject.

SEC. 10. For the first ten years, after the year one thousand eight hundred and fifty-one, the apportionment of Representatives shall be as provided in the schedule, and no change shall ever be made

Apportionment of Representatives for ten years.

in the principles of representation, as herein established, or, in the Senatorial districts, except as above provided. All territory, belonging to a county at the time of any apportionment, shall, as to the right of representation and suffrage, remain an integral part thereof, during the decennial period.

When the Governor, Auditor, and Secretary of State to determine ratio of representation.

SEC. 11. The Governor, Auditor and Secretary of State, or any two of them, shall, at least six months prior to the October election, in the year one thousand eight hundred and sixty-one, and, at each decennial period thereafter, ascertain and determine the ratio of representation, according to the decennial census, the number of Representatives and Senators each county or district shall be entitled to elect, and for what years, within the next ensuing ten years, and the Governor shall cause the same to be published, in such manner as shall be directed by law.

JUDICIAL APPORTIONMENT.

Judicial purposes.

SEC. 12. For Judicial purposes, the State shall be apportioned as follows :

1st district.

The county of Hamilton, shall constitute the first district, which shall not be subdivided ; and the Judges therein, may hold separate courts, or separate sittings of the same court, at the same time.

2d district.

The counties, of Butler, Preble and Darke, shall constitute the first subdivision, Montgomery, Miami and Champaign, the second, and Warren, Clinton, Greene and Clarke, the third subdivision, of of the second district ; and, together, shall form such district.

3d district.

The counties of Shelby, Auglaize, Allen, Hardin, Logan, Union and Marion shall constitute the first subdivision, Mercer, Van Wert, Putnam, Paulding, Defiance, Williams, Henry and Fulton, the second, and Wood, Seneca, Hancock, Wyandot and Crawford, the third subdivision, of the third district ; and together, shall form such district.

4th district.

The counties of Lucas, Ottawa, Sandusky, Erie and Huron, shall constitute the first subdivision, Lorain, Medina and Summit, the second, and the county of Cuyahoga, the third sub-division, of the fourth district ; and, together, shall form such district.

5th district.

The counties of Clermont, Brown and Adams, shall constitute the first subdivision, Highland, Ross and Fayette, the second, and Pickaway, Franklin and Madison, the third subdivision, of the fifth district ; and, together, shall form such district.

6th district.

The counties of Licking, Knox and Delaware, shall constitute the first subdivision, Morrow, Richland and Ashland, the second, and Wayne, Holmes and Coshocton, the third subdivision, of the sixth district ; and, together, shall form such district.

The counties of Fairfield, Perry and Hocking, shall constitute the first subdivision, Jackson, Vinton, Pike, Scioto and Lawrence, the second, and Gallia, Meigs, Athens and Washington, the third subdivision, of the seventh district ; and, together, shall form such district.

7th district.

The counties of Muskingum and Morgan, shall constitute the first subdivision, Guernsey, Belmont and Monroe, the second, and Jefferson, Harrison and Tuscarawas, the third subdivision, of the eighth district ; and, together, shall form such district.

8th district.

The counties of Stark, Carroll and Columbiana, shall constitute the first subdivision, Trumbull, Portage and Mahoning, the second, and Geauga, Lake and Ashtabula, the third subdivision, of the ninth district ; and, together, shall form such district.

9th district.

Sec. 13. The General Assembly shall attach any new counties, that may hereafter be erected, to such districts, or subdivisions thereof, as shall be most convenient.

New counties attached.

ARTICLE XII.

FINANCE AND TAXATION.

Sec. 1. The levying of taxes, by the poll, is grievous and oppressive ; therefore, the General Assembly shall never levy a poll tax, for county or State purposes.

Poll tax.

Sec. 2. Laws shall be passed, taxing, by a uniform rule, all moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise ; and also all real and personal property, according to its true value in money ; but burying grounds, public school houses, houses used exclusively for public worship, institutions of purely public charity, public property used exclusively for any public purpose ; and personal property, to an amount not exceeding in value two hundred dollars, for each individual, may, by general laws, be exempted from taxation : but, all such laws shall be subject to alteration or repeal ; and the value of all property, so exempted, shall, from time to time, be ascertained and published, as may be directed by law.

Taxation by uniform rule.

Sec. 3. The General Assembly shall provide, by law, for taxing the notes and bills discounted or purchased, moneys loaned, and all other property, effects, or dues, of every description, (without deduction,) of all Banks, now existing, or hereafter created, and of all

Same subject.

bankers, so that all property employed in banking, shall always bear a burden of taxation, equal to that imposed on the property of individuals.

Revenue.

Sec. 4. The General Assembly shall provide for raising revenue, sufficient to defray the expenses of the State, for each year, and also a sufficient sum to pay the interest on the State debt.

Levying of taxes.

Sec. 5. No tax shall be levied, except in pursuance of law ; and every law imposing a tax, shall state, distinctly, the object of the same, to which only, it shall be applied.

No debt for internal improvement.

Sec. 6. The State shall never contract any debt for purposes of internal improvement.

ARTICLE XIII.

CORPORATIONS.

Corporate powers.

Sec. 1. The General Assembly shall pass no special act conferring corporate powers.

Corporations, how formed.

Sec. 2. Corporations may be formed under general laws ; but all such laws may, from time to time, be altered or repealed.

Dues from corporations, how secured.

Sec. 3. Dues from corporations shall be secured, by such individual liability of the stockholders, and other means, as may be prescribed by law ; but, in all cases, each stockholder shall be liable, over and above the stock by him or her owned, and any amount unpaid thereon, to a further sum, at least equal in amount to such stock.

Corporate property subject to taxation.

Sec. 4. The property of corporations, now existing or hereafter created, shall forever be subject to taxation, the same as the property of individuals.

Right of way.

Sec. 5. No right of way shall be appropriated to the use of any corporation, until full compensation therefor be first made in money, or first secured by a deposit of money, to the owner, irrespective of any benefit from any improvement proposed by such corporation : which compensation shall be ascertained by a jury of twelve men, in a court of record, as shall be prescribed by law.

Organization of cities, &c.

Sec. 6. The General Assembly shall provide for the organization of cities, and incorporated villages, by general laws ; and restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent the abuse of such power.

Associations with banking powers.

Sec. 7. No act of the General Assembly, authorizing associations with banking powers, shall take effect until it shall be submit-

ted to the people, at the general election next succeeding the passage thereof, and be approved by a majority of all the electors, voting at such election.

ARTICLE XIV.

JURISPRUDENCE.

Sec. 1. The General Assembly, at its first session after the adoption of this Constitution, shall provide for the appointment of three Commissioners, and prescribe their tenure of office, compensation, and the mode of filling vacancies in said commission. Commissioners.

Sec. 2. The said Commissioners shall revise, reform, simplify and abridge the practice, pleadings, forms, and proceedings of the Courts of record of this State; and, as far as practicable and expedient, shall provide for the abolition of the distinct forms of action at law, now in use, and for the administration of justice by a uniform mode of proceeding, without reference to any distinction between law and equity. Their duties.

Sec. 3. The proceedings of the Commissioners shall, from time to time, be reported to the General Assembly, and be subject to the action of that body. Their report.

ARTICLE XV.

MISCELLANEOUS.

Sec. 1. Columbus shall be the seat of government, until otherwise directed by law. Seat of government.

Sec. 2. The printing of the laws, journals, bills, legislative documents and papers for each branch of the General Assembly, with the printing required for the Executive and other departments of State, shall be let, on contract, to the lowest responsible bidder, by such Executive officers, and in such manner, as shall be prescribed by law. Public printing.

Sec. 3. An accurate and detailed statement of the receipts and expenditures of the public money, the several amounts paid, to whom, and on what account, shall, from time to time, be published, as shall be prescribed by law. Receipts and expenditures.

Sec. 4. No person shall be elected or appointed to any office in this State, unless he possess the qualifications of an elector. Who eligible to office.

Sec. 5. No person who shall hereafter fight a duel, assist in the same as second, or send, accept, or knowingly carry, a challenge therefor, shall hold any office in this State. Duellists ineligible.

- Lotteries.** **SEC. 6.** Lotteries, and the sale of lottery tickets, for any purpose whatever, shall forever be prohibited in this State.
- Oath of officers.** **SEC. 7.** Every person chosen or appointed to any office under this State, before entering upon the discharge of its duties, shall take an oath or affirmation, to support the Constitution of the United States, and of this State, and also an oath of office.
- Bureau of statistics.** **SEC. 8.** There may be established, in the Secretary of State's Office, a bureau of statistics, under such regulations as may be prescribed by law.

ARTICLE XVI.

AMENDMENTS.

- This constitution may be amended, and how.** **SEC. 1.** Either branch of the General Assembly may propose amendments to this constitution; and, if the same shall be agreed to, by three-fifths of the members elected to each House, such proposed amendments shall be entered on the journals, with the yeas and nays, and shall be published in at least one newspaper in each county of the State, where a newspaper is published, for six months preceding the next election for Senators and Representatives, at which time the same shall be submitted to the electors, for their approval or rejection; and if a majority of the electors, voting at such election, shall adopt such amendments, the same shall become a part of the Constitution. When more than one amendment shall be submitted at the same time, they shall be so submitted, as to enable the electors to vote on each amendment, separately.
- Same subject.** **SEC. 2.** Whenever two-thirds of the members elected to each branch of the General Assembly, shall think it necessary to call a Convention, to revise, amend, or change this Constitution, they shall recommend to the electors to vote, at the next election of members to the General Assembly, for or against a Convention; and if a majority of all the electors, voting at said election, shall have voted for a Convention, the General Assembly shall, at their next session, provide, by law, for calling the same. The Convention shall consist of as many members as the House of Representatives, who shall be chosen in the same manner, and shall meet within three months after their election, for the purpose aforesaid.
- Same subject.** **SEC. 3.** At the General election, to be held in the year one thousand eight hundred and seventy-one, and in each twentieth year thereafter, the question: "Shall there be a Convention to revise, alter, or amend the Constitution," shall be submitted to the electors

of the State; and, in case a majority of all the electors, voting at such election, shall decide in favor of a Convention, the General Assembly, at its next session, shall provide, by law, for the election of delegates, and the assembling of such Convention, as is provided in the preceding section; but no amendment of this Constitution, agreed upon by any Convention assembled in pursuance of this article, shall take effect, until the same shall have been submitted to the electors of the State, and adopted by a majority of those voting thereon.

SCHEDULE.

SEC. 1. All laws of this State, in force on the first day of September, one thousand eight hundred and fifty-one, not inconsistent with this Constitution, shall continue in force, until amended or repealed.

Of prior laws.

SEC. 2. The first election for members of the General Assembly, under this Constitution, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one.

The first election for members of General Assembly.

SEC. 3. The first election for Governor, Lieutenant Governor, Auditor, Treasurer, and Secretary of State and Attorney General, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one. The persons, holding said offices on the first day of September, one thousand eight hundred and fifty-one, shall continue therein, until the second Monday of January, one thousand eight hundred and fifty-two.

For State officers.

SEC. 4. The first election for Judges of the supreme court, courts of common pleas, and probate courts, and Clerks of the courts of common pleas, shall be held on the second Tuesday of October, one thousand eight hundred and fifty-one, and the official term of said Judges and Clerks, so elected, shall commence on the second Monday of February, one thousand eight hundred and fifty-two. Judges and Clerks of the courts of common pleas and supreme court, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office with their present powers and duties, until the second Monday of February, one thousand, eight hundred and fifty-two. No suit or proceeding, pending in any of the courts of this State, shall be affected by the adoption of this constitution.

For Judges, Clerks, &c.

SEC. 5. The Register and Receiver of the land office, Directors of the Penitentiary, Directors of the Benevolent Institutions of the State, the State Librarian, and all other officers, not otherwise provided for in this constitution, in office on the first day of September,

What officers to continue in office until the expiration of their term.

one thousand eight hundred and fifty-one, shall continue in office, until their terms expire, respectively, unless the General Assembly shall otherwise provide.

As to certain courts.

SEC. 6. The Superior and Commercial Courts of Cincinnati, and the Superior Court of Cleveland, shall remain, until otherwise provided by law, with their present powers and jurisdiction; and the Judges and Clerks of said courts, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office, until the expiration of their terms of office, respectively, or, until otherwise provided by law; but neither of said courts shall continue after the second Monday of February, one thousand eight hundred and fifty-three; and no suits shall be commenced in said two first mentioned courts, after the second Monday of February, one thousand eight hundred and fifty-two, nor in said last mentioned court, after the second Monday in August, one thousand eight hundred and fifty-two; and all business in either of said courts, not disposed of within the time limited for their continuance as aforesaid, shall be transferred to the court of common pleas.

County and township officers.

SEC. 7. All County and Township officers and Justices of the Peace, in office on the first day of September, one thousand eight hundred and fifty-one, shall continue in office until their terms expire, respectively.

Vacancies.

SEC. 8. Vacancies in office, occurring after the first day of September, one thousand eight hundred and fifty-one, shall be filled, as is now prescribed by law, and until officers are elected or appointed and qualified, under this constitution.

When constitution shall take effect.

SEC. 9. This Constitution shall take effect, on the first day of September, one thousand eight hundred and fifty-one.

Term of office.

SEC. 10. All officers shall continue in office, until their successors shall be chosen and qualified.

Transfer of suits.

SEC. 11. Suits pending in the Supreme Court in Bank, shall be transferred to the Supreme Court provided for in this constitution, and be proceeded in according to law.

Same subject.

SEC. 12. The district courts shall, in their respective counties, be the successors of the present Supreme Court; and all suits, prosecutions, judgments, records and proceedings, pending and remaining in said Supreme Court, in the several counties of any district, shall be transferred to the respective district courts of such counties, and be proceeded in, as though no change had been made in said Supreme Court.

Same subject.

SEC. 13. The said courts of common pleas, shall be the successors of the present courts of common pleas in the several counties,

except as to probate jurisdiction ; and all suits, prosecutions, proceedings, records and judgments, pending or being in said last mentioned courts, except as aforesaid, shall be transferred to the courts of common pleas created by this constitution, and proceeded in, as though the same had been therein instituted.

Sec. 14. The Probate courts provided for in this constitution, as to all matters within the jurisdiction conferred upon said courts, shall be the successors, in the several counties, of the present courts of common pleas ; and the records, files and papers, business and proceedings, appertaining to said jurisdiction, shall be transferred to said courts of probate, and be there proceeded in, according to law.

Same subject.

Sec. 15. Until otherwise provided by law, elections for Judges and Clerks shall be held, and the poll books returned, as is provided for Governor, and the abstract therefrom, certified to the Secretary of State, shall be by him opened, in the presence of the Governor, who shall declare the result, and issue commissions to the persons elected.

Judges and Clerks, how elected, &c.

Sec. 16. Where two or more counties are joined in a Senatorial, Representative, or Judicial district, the returns of elections shall be sent to the county, having the largest population.

Election returns, where sent.

Sec. 17. The foregoing constitution shall be submitted to the electors of the State, at an election to be held on the third Tuesday of June, one thousand eight hundred and fifty-one, in the several election districts of this State. The ballots at such election shall be written or printed as follows : Those in favor of the constitution, "New Constitution, Yes ;" those against the constitution, "New Constitution, No." The polls at said election shall be opened between the hours of eight and ten o'clock A. M., and closed at six o'clock P. M. ; and the said election shall be conducted, and the returns thereof made and certified, to the Secretary of State, as provided by law for annual elections of State and County officers. Within twenty days after such election, the Secretary of State shall open the returns thereof, in the presence of the Governor ; and, if it shall appear that a majority of all the votes, cast at such election, are in favor of the constitution, the Governor shall issue his proclamation, stating that fact, and said constitution shall be the constitution of the State of Ohio, and not otherwise.

Constitution submitted to the electors of the State, &c.

Sec. 18. At the time when the votes of the electors shall be taken for the adoption or rejection of this constitution, the additional section, in the words following, to wit : "No license to traffic in intoxicating liquors shall hereafter be granted in this State ; but the General Assembly may, by law, provide against evils resulting

License to traffic in intoxicating liquor.

therefrom," shall be separately submitted to the electors for adoption or rejection, in form following, to wit: A separate ballot may be given by every elector and deposited in a separate box. Upon the ballots given for said separate amendment shall be written or printed, or partly written and partly printed, the words: "License to sell intoxicating liquors, Yes;" and upon the ballots given against said amendment, in like manner, the words: "License to sell intoxicating liquors, No." If, at the said election, a majority of all the votes given for and against said amendment, shall contain the words: "License to sell intoxicating liquors, No," then the said amendment shall be a separate section of article fifteen of the constitution.

Apportionment
for House of
Representatives.

SEC. 19. The apportionment for the House of Representatives, during the first decennial period under this constitution, shall be as follows:

The counties of Adams, Allen, Athens, Auglaize, Carroll, Champaign, Clark, Clinton, Crawford, Darke, Delaware, Erie, Fayette, Gallia, Geauga, Greene, Hancock, Harrison, Hocking, Holmes, Lake, Lawrence, Logan, Madison, Marion, Meigs, Morrow, Perry, Pickaway, Pike, Preble, Sandusky, Scioto, Shelby and Union, shall, severally, be entitled to one Representative, in each session of the decennial period.

The counties of Franklin, Licking, Montgomery and Stark, shall each be entitled to two Representatives, in each session of the decennial period.

The counties of Ashland, Coshocton, Highland, Huron, Lorain, Mahoning, Medina, Miami, Portage, Seneca, Summit and Warren, shall, severally, be entitled to one Representative, in each session; and one additional Representative, in the fifth session of the decennial period.

The counties of Ashtabula, Brown, Butler, Clermont, Fairfield, Guernsey, Jefferson, Knox, Monroe, Morgan, Richland, Trumbull, Tuscarawas and Washington, shall, severally, be entitled to one Representative, in each session; and two additional Representatives, one in the third, and one in the fourth session, of the decennial period.

The counties of Belmont, Columbiana, Ross and Wayne, shall, severally, be entitled to one Representative, in each session; and three additional Representatives, one in the first, one in the second, and one in the third session, of the decennial period.

The county of Muskingum shall be entitled to two Representatives, in each session; and one additional Representative, in the fifth session of the decennial period.

The county of Cuyahoga shall be entitled to two Representatives, in each session; and two additional Representatives, one in the third, and one in the fourth session, of the decennial period.

The county of Hamilton shall be entitled to seven Representatives, in each session; and four additional Representatives, one in the first, one in the second, one in the third, and one in the fourth session, of the decennial period.

The following counties, until they shall have acquired a sufficient population to entitle them to elect, separately, under the fourth section of the eleventh article, shall form districts in manner following, to wit: The counties of Jackson and Vinton, one district; the counties of Lucas and Fulton, one district; the counties of Wyandot and Hardin, one district; the counties of Mercer and Van Wert, one district; the counties of Paulding, Defiance and Williams, one district; the counties of Putnam and Henry, one district; and the counties of Wood and Ottawa, one district: each of which districts shall be entitled to one Representative, in every session of the decennial period.

Done in Convention, at Cincinnati, the tenth day of March, in the year of our Lord, one thousand eight hundred and fifty-one, and of the independence of the United States, the seventy-fifth.

WILLIAM MEDILL, *President.*

Attest: WM. H. GILL, *Secretary.*

S. J. ANDREWS,
WILLIAM BARBEE,
JOSEPH BARNETT,
DAVID BARNET,
WM. S. BATES,
A. I. BENNETT,
JOHN H. BLAIR,
JACOB BLICKENSBERGER,
VAN BROWN,
R. W. CAHILL,
L. CASE,
DAVID CHAMBERS,
JOHN CHANY,
H. D. CLARK,
GEORGE COLLINS,
FRIEND COOK,
OTWAY CURRY,
G. VOLNEY DORSEY,
THOS. W. EWART,
JOHN EWING,
JOSEPH M. FARR,
ELIAS FLORENCE,
ROBERT FORBES,
H. N. GILLET,
JOHN GRAHAM,

JACOB J. GREENE,
JOHN L. GREEN,
HENRY H. GREGG,
W. S. GROESBECK,
C. S. HAMILTON,
D. D. T. HARD,
A. HARLAN,
WILLIAM HAWKINS,
JAMES P. HENDERSON,
PETER HITCHCOCK,
J. MCCORMICK,
G. W. HOLMES,
GEO. B. HOLT,
JOHN J. HOOTMAN,
V. B. HORTON,
SAMUEL HUMPHREVILLE,
JOHN E. HUNT,
B. B. HUNTER,
JOHN JOHNSON,
J. DAN. JONES,
JAMES B. KING,
S. J. KIRKWOOD,
THOS. J. LARSH,
WILLIAM LAWRENCE,
JOHN LARWILL,

ROBERT LEECH,
 D. P. LEADBETTER,
 JOHN LIDEY,
 JAMES LOUDON,
 H. S. MANON,
 SIMON MASON,
 MATTHEW H. MITCHELL,
 ISAIAH MORRIS,
 CHARLES MCCLOUD,
 S. F. NORRIS,
 CHAS. J. ORTON,
 W. S. C. OTIS,
 THOMAS PATTERSON,
 DANL. PECK,
 JACOB PERKINS,
 SAML. QUIGLEY,
 R. P. RANNEY,
 CHS. REEMELIN,
 ADAM N. RIDDLE,
 EDWARD C. ROLL,
 WM. SAWYER,
 SABERT SCOTT,
 JOHN SELLERS,
 JOHN A. SMITH,
 GEORGE J. SMITH,
 B. P. SMITH,

HENRY STANBURY,
 B. STANTON,
 ALBERT V. STEBBINS,
 E. T. STICKNEY,
 HARMAN STIDGER,
 JAMES STRUBLE,
 J. R. SWAN,
 L. SWIFT,
 JAMES W. TAYLOR,
 NORTON S. TOWNSEND,
 ELIJAH VANCE,
 WM. M. WARREN,
 THOMAS A. WAY,
 J. MILTON WILLIAMS,
 ELSEY WILSON,
 JAS. T. WORTHINGTON,
 E. B. WOODBURY,
 H. C. GRAY,
 EDWARD ARCHBOLD,
 REUBEN HITCHCOCK,
 F. CASE,
 JOSEPH VANCE,
 RICH'D STILLWELL,
 SIMEON NASH,
 HUGH THOMPSON,
 JOSEPH THOMPSON.

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The following counties are entitled to one representative and one additional one in the fifth session of the decennial period, to wit:

Ashland, Coshocton, Highland, Huron, Lorain, Mahoning, Medina, Miami, Portage, Seneca, Summit, and Warren.

The following counties are entitled to one representative each, and one other in the third and fourth session of the decennial period, to wit:

Ashtabula, Brown, Clermont, Fairfield, Guernsey, Jefferson, Knox, Monroe, Morgan, Richland, Trumbull, Tuscarawas, and Washington.

The following counties are entitled to one representative, and one other in the first, one in the second, and one in the third decennial period, to wit:

Belmont, Columbiana, Ross, and Wayne.

The county of Muskingum shall be entitled to two representatives and one other in the fifth session.

The county of Cuyahoga shall be entitled to two representatives, and one additional in the third and fourth sessions.

The county of Hamilton is entitled to seven representatives, and one other in the first, second, third and fourth sessions.

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| Mahoning..... | 9 | 2 | do | do | 1 | 1 | 5 | do | do | 23 | do | 7 |
| Marion..... | 3 | 1 | do | do | 1 | | | do | do | 13 | do | 7 |

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| COUNTIES. | Judicial District. | | Article. | Section. | No. of Representatives. | | What Sessions. | Article. | Section. | Senatorial District. | Article. | Section. |
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| | Subdivision. | | | | Additional. | | | | | | | |
| Medina | 4 | 2 | 11 | 12 | 1 | 1 | 5 | Sched. | 19 | 27 | 11 | 7 |
| Meigs | 7 | 3 | do | do | 1 | | do | do | do | 8 | do | 7 |
| Mercer, with Van Wert..... | 3 | 2 | do | do | 1 | ..... | do | do | do | 32 | do | 7 |
| Miami | 2 | 2 | do | do | 1 | 1 | 5 | do | do | 12 | do | 7 |
| Monroe | 8 | 2 | do | do | 1 | 2 | 3-4 | do | do | 19 | do | 7 |
| Montgomery | 2 | 2 | do | do | 2 | ..... | do | do | do | 3 | do | 7 |
| Morgan | 8 | 1 | do | do | 1 | 2 | 3-4 | do | do | 14 | do | 7 |
| Morrow | 6 | 1 | do | do | 1 | ..... | do | do | do | 17 | do | 7 |
| Muskingum | 8 | 1 | do | do | 2 | 1 | 5 | do | do | 15 | do | 7 |
| *Noble | 8 | 1 | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... | ..... |
| Ottawa, with Wood | 4 | 1 | do | do | 1 | ..... | do | do | do | 30 | do | 7 |
| Paulding, with Defiance and Williams | 3 | 2 | do | do | 1 | ..... | do | do | do | 32 | do | 7 |
| Perry | 7 | 1 | do | do | 1 | ..... | do | do | do | 18 | do | 7 |
| Pickaway | 5 | 3 | do | do | 1 | ..... | do | do | do | 10 | do | 7 |
| Pike | 7 | 2 | do | do | 1 | ..... | do | do | do | 7 | do | 7 |
| Portage | 9 | 2 | do | do | 1 | 1 | 5 | do | do | 26 | do | 7 |
| Preble | 2 | 1 | do | do | 1 | ..... | do | do | do | 3 | do | 7 |
| Putnam, with Henry | 3 | 2 | do | do | 1 | ..... | do | do | do | 33 | do | 7 |
| Richland | 6 | 2 | do | do | 1 | 2 | 3-4 | do | do | 29 | do | 7 |
| Ross | 5 | 2 | do | do | 1 | 3 | 1-2-3 | do | do | 6 | do | 7 |
| Sandusky | 4 | 1 | do | do | 1 | ..... | do | do | do | 30 | do | 7 |
| Scioto | 7 | 2 | do | do | 1 | ..... | do | do | do | 7 | do | 7 |
| Seneca | 3 | 3 | do | do | 1 | 1 | 5 | do | do | 31 | do | 7 |
| Shelby | 3 | 1 | do | do | 1 | ..... | do | do | do | 12 | do | 7 |
| Stark | 9 | 1 | do | do | 1 | ..... | do | do | do | 21 | do | 7 |
| Summit | 4 | 2 | do | do | 1 | 1 | 5 | do | do | 26 | do | 7 |
| Trumbull | 9 | 2 | do | do | 1 | 2 | 3-4 | do | do | 23 | do | 7 |
| Tuscarawas | 8 | 3 | do | do | 1 | 2 | 3-4 | do | do | 18 | do | 7 |
| Union | 3 | 1 | do | do | 1 | ..... | do | do | do | 13 | do | 7 |
| Van Wert, with Mercer | 3 | 2 | do | do | 1 | ..... | do | do | do | 32 | do | 7 |
| Vinton, with Jackson | 7 | 2 | do | do | 1 | ..... | do | do | do | 8 | do | 7 |
| Warren | 2 | 3 | do | do | 1 | 1 | 5 | do | do | 2 | do | 7 |
| Washington | 7 | 3 | do | do | 1 | 2 | 3-4 | do | do | 14 | do | 7 |
| Wayne | 6 | 3 | do | do | 1 | 3 | 1-2-3 | do | do | 28 | do | 7 |
| Williams, with Paulding and Defiance | 3 | 2 | do | do | 1 | ..... | do | do | do | 32 | do | 7 |
| Wood, and others | 3 | 3 | do | do | 1 | ..... | do | do | do | 33 | do | 7 |
| Wyandot, with Hardin | 3 | 3 | do | do | 1 | ..... | do | do | do | 31 | do | 7 |

* Erected since the Constitution was framed—attached to eighth district, first subdivision, by law.

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| how composed | 4 | 5 |
| to be successors of the Supreme Court | Sch. | 12 |
| to be held in each county once a year, except | 4 | 5 |
| the judges may be authorized to fix the time of holding | 4 | 5 |
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| Hamilton county to constitute one | 4 | 3 |
| three or more counties in each of the others | 4 | 3 |
| each divided into three subdivisions | 4 | 3 |
| each subdivision to have one Judge of Common Pleas | 4 | 3 |
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| Legislature not to grant | 2 | 32 |
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| contested, regulated by law | 2 | 21 |
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| for county officers, held on 2d Tuesday in October | 10 | 2 |
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| to adopt Constitution | Sch. | 17 |
| district, returns sent to the largest county | Sch. | 16 |
| ELECTION RETURNS— | | |
| for Judges, how made and certified | Sch. | 4 |
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| election of, how regulated | Sch. | 3 |
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| officers of, to report to Governor | 3 | 20 |
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| terms of office of, when they expire | 3 | 2 |
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| receipts and expenditures to be published | 15 | 3 |
| FINES— | | |
| excessive, not imposed | 1 | 9 |
| FORMS OF ACTIONS AT LAW— | | |
| to be abolished, if practicable and expedient | 14 | 2 |
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| shall consist of a Senate and House of Representatives .. | 2 | 1 |
| elected biennially | 2 | 2 |
| each House shall be judge of the qualifications of its own members | 2 | 6 |
| a majority to constitute a quorum | 2 | 6 |
| who shall not be members | 2 | 4, 5 |
| each House to choose its own officers, except | 2 | 8 |
| to determine its own rules | 2 | 8 |
| when it may expel a member | 2 | 8 |
| to keep a journal | 2 | 9 |
| yeas and nays taken at the passage of every bill | 2 | 9 |
| any member may protest | 2 | 10 |
| vacancies in either House, how filled | 2 | 11 |
| members of how privileged | 2 | 12 |
| proceedings of, to be public, except | 2 | 13 |
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| appropriations | 2 | 22 |
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| cannot pass laws impairing contract..... | 2 | 28 |
| to make no extra compensation, &c..... | 2 | 29 |
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| members, compensation..... | 2 | 31 |
| no perquisites allowed..... | 2 | 31 |
| shall grant no divorces..... | 2 | 32 |
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| shall never authorize counties, cities, towns, or townships, to vote to raise money for joint stock companies | 8 | 6 |
| duties as to sinking fund..... | 8 | 9 |
| to provide for safe keeping of public arms | 9 | 5 |
| to provide for county and township officers..... | 10 | 1 |
| to cause sufficient revenue to be raised | 12 | 4 |
| shall provide for taxing bills discounted, &c..... | 12 | 3 |
| shall pass no special act of incorporation | 13 | 1 |
| shall incorporate cities and towns by general law..... | 13 | 6 |
| its first session shall provide for the appointment of three commissioners to reform the laws..... | 14 | 1 |
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| less than a majority may adjourn from day to day..... | 2 | 6 |
| less than a majority may compel attendance | 2 | 6 |
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| instituted to protect the people..... | 1 | 2 |
| the people may change..... | 1 | 2 |
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| elected 2d Tuesday in October, biennially..... | 3 | 1 |
| to be one of the Executive Department..... | 3 | 1 |
| office commences 2d Monday of January..... | 3 | 2 |
| may require information of Executive Department..... | 3 | 6 |
| shall see that the laws be executed..... | 3 | 6 |
| shall recommend measures to the General Assembly..... | 3 | 7 |
| may convene the General Assembly | 3 | 8 |
| may adjourn the General Assembly, when | 3 | 9 |
| shall be commander-in-chief of the military and naval forces, except..... | 3 | 10 |
| may pardon, reprieve, or commute, when, &c | 3 | 11 |
| shall inform the General Assembly of pardons..... | 3 | 11 |
| shall keep the seal of the State..... | 3 | 12 |
| shall sign commissions..... | 3 | 13 |
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| shall transmit reports and message to General Assembly.. | 3 | 20 |
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| shall have power to call out the militia, when | 9 | 4 |
| shall, with the Auditor and Secretary of State, prior to the election, every ten years, determine the ratio of repre- sentation..... | 11 | 11 |
| shall issue commissions for Judges and Clerks | Sch. | 15 |
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| shall not be electors..... | 5 | 6 |
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| penalty of..... | 2 | 24 |
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| public, the State not to contract debt for..... | 12 | 6 |
| INDICTMENTS— | | |
| how they shall conclude..... | 4 | 20 |
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| 2d Subdivision—Montgomery, Miami and Cham- | | |
| paign. | | |
| 3d Subdivision—Warren, Clinton, Greene and Clark. | | |
| THIRD—1st Subdivision—Shelby, Auglaize, Allen, Hardin, | | |
| Logan, Union, and Marion. | | |
| 2d Subdivision—Mercer, Van Wert, Putnam, Pauld- | | |
| ing, Defiance, Williams, Henry and Fulton. | | |
| 3d Subdivision—Wood, Seneca, Hancock, Wyandot | | |
| and Crawford. | | |
| FOURTH—1st Subdivision—Lucas, Ottawa, Sandusky, Erie | | |
| and Huron. | | |
| 2d Subdivision—Lorain, Medina and Summit. | | |
| 3d Subdivision—Cuyahoga. | | |
| FIFTH—1st Subdivision—Clermont, Brown and Adams. | | |
| 2d Subdivision—Highland, Ross and Fayettee. | | |
| 3d Subdivision—Pickaway, Franklin and Madison. | | |
| SIXTH—1st Subdivision—Licking, Knox and Delaware. | | |
| 2d Subdivision—Morrow, Richland, and Ashland. | | |
| 3d Subdivision—Wayne, Holmes and Coshocton. | | |
| SEVENTH—1st Subdivision—Fairfield, Perry and Hocking. | | |
| 2d Subdivision—Jackson, Vinton, Pike, Scioto and | | |
| Lawrence. | | |
| 3d Subdivision—Gallia, Meigs, Athens and Wash- | | |
| ington. | | |
| EIGHTH—1st Subdivision—Muskingum and Morgan. | | |
| 2d Subdivision—Guernsey, Belmont and Monroe. | | |
| 3d Subdivision—Jefferson, Harrison and Tuscara- | | |
| was. | | |
| NINTH—1st Subdivision—Stark, Carroll and Columbiana. | | |
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| 3d Subdivision—Geauga, Lake and Ashtabula. | | |
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ACTS OF A GENERAL NATURE.

AN ACT

To establish a Code of Civil Procedure.

BE IT ENACTED *by the General Assembly of the State of Ohio*, as follows:

PRELIMINARY PROVISIONS.

§ 1. This Act shall be known as the Code of Civil Procedure of the State of Ohio.

§ 2. The rule of the common law, that statutes in derogation thereof, are to be strictly construed, has no application to this code. Its provisions, and all proceedings under it, shall be liberally construed, with a view to promote its object, and assist the parties in obtaining justice.

TITLE I.

FORM OF CIVIL ACTIONS.

§ 3. The distinction between actions at law and suits in equity, and the forms of all such actions and suits, heretofore existing, are abolished; and in their place, there shall be, hereafter, but one form of action, which shall be called a civil action.

Distinction between actions at law and suits in equity abolished. One form of action.

§ 4. In such action, the party complaining, shall be known as the plaintiff, and the adverse party as the defendant.

Parties, how designated.

§ 5. There can be no feigned issues; but a question of fact, not put in issue by the pleadings, may be tried by a

Feigned issues abolished.

jury, upon an order for the trial, stating, distinctly and plainly, the question of fact to be tried, and such order is the only authority necessary for a trial.

TITLE II.

TIME OF COMMENCING CIVIL ACTIONS.

- CHAPTER 1. Actions in general.
 2. Actions for the recovery of real property.
 3. Actions other than for the recovery of real property.
 4. General provisions.

CHAPTER I.

ACTIONS IN GENERAL.

Suits pending, and rights of action which have accrued, not affected.

§ 6. This title shall not apply to actions already commenced, or to cases where the right of action has already accrued; but the statutes now in force shall be applicable to such cases, according to the subject of the action, and without regard to the form; nor shall this title apply in the case of a continuing and subsisting trust, or to an action by a vendee of real property, in possession thereof, to obtain a conveyance of it.

Certain statutes of limitation repealed.

§ 7. The act entitled, "an act for the limitation of actions," passed February eighteenth, one thousand eight hundred and thirty-one; the one hundred and sixtieth section of "an act to provide for the settlement of the estates of deceased persons," passed March twenty-third, one thousand eight hundred and forty; and the second section of "an act to give additional security to land titles in this State," passed March twenty-second, one thousand eight hundred and forty-nine, are hereby repealed.

When civil actions shall be commenced.

§ 8. Civil actions can only be commenced within the periods prescribed in this title, after the cause of action shall have accrued, but where, in special cases, a different limitation is prescribed by statute, the action may be commenced accordingly.

CHAPTER II.

ACTION FOR THE RECOVERY OF REAL PROPERTY.

For the recovery of real property, twenty years.

§ 9. An action for the recovery of the title, or possession of lands, tenements, or hereditaments, can only be brought within twenty-one years after the cause of such action shall have accrued.

§ 10. If a person entitled to commence any action for the recovery of the title or possession of any lands, tenements, or hereditaments, be at the time his right or title shall first descend, or accrue, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person may, after the expiration of twenty-one years from the time his right or title first descended, or accrued, bring such action within ten years after such disability is removed, and at no time thereafter.

Right of action saved to persons under certain disabilities.

§ 11. An action for the forcible entry and detention, or forcible detention only, of real property, can only be brought within two years after the cause of such action shall have accrued.

Forcible entry and detention.

CHAPTER III.

ACTIONS OTHER THAN FOR THE RECOVERY OF REAL PROPERTY.

§ 12. Civil actions other than for the recovery of real property, can only be brought within the following periods after the cause of action shall have accrued.

§ 13. Within fifteen years:

An action upon a specialty, or any agreement, contract, or promise in writing.

Obligations in writing, fifteen years.

§ 14. Within six years:

An action upon a contract not in writing, express or implied.

Contracts not in writing, &c., six years.

An action upon a liability created by statute, other than a forfeiture or penalty.

§ 15. Within four years:

An action for trespass upon real property.

Trespass, &c. four years.

An action for taking, detaining, or injuring personal property, including actions for the specific recovery of personal property.

An action for an injury to the rights of the plaintiff, not arising on contract, and not hereinafter enumerated.

An action for relief on the ground of fraud; the cause of action in such case shall not be deemed to have accrued, until the discovery of the fraud.

§ 16. Within one year:

An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment.

Libel, Slander, assault and battery, &c. &c. one year.

An action upon a statute for a penalty or forfeiture; but where the statute giving such action, prescribes a different limitation, the action may be brought within the period so limited.



Actions upon official bonds, ten years.

§ 17. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer; or upon the bond or undertaking given in attachment, injunction, arrest, or in any case whatever required by statute, can only be brought within ten years after the cause of action shall have accrued; but this section shall be subject to the qualification in section eight.

Other relief within ten years.

§ 18. An action for relief, not hereinbefore provided for, can only be brought within ten years after the cause of action shall have accrued.

Right of action saved to persons under certain disabilities.

§ 19. If a person, entitled to bring any action mentioned in this chapter, except for a penalty, or forfeiture, be, at the time the cause of action accrued, within the age of twenty-one years, a married woman, insane, or imprisoned, every such person shall be entitled to bring such action within the respective times limited by this chapter, after such disability shall be removed.

CHAPTER IV.

GENERAL PROVISIONS.

When an action is deemed commenced under this title.

§ 20. An action shall be deemed commenced within the meaning of this title, as to each defendant, at the date of the summons which is served on him, or on a co-defendant who is a joint contractor, or otherwise united in interest with him: where service by publication is proper, the action shall be deemed commenced at the date of the first publication, which publication must be regularly made.

Attempt, when equivalent to a commencement.

An attempt to commence an action shall be deemed equivalent to the commencement thereof, within the meaning of this title, when the party faithfully, properly and diligently, endeavors to procure a service: but such attempt must be followed by service within sixty days.

§ 21. If, when a cause of action accrues against a person, he be out of the State, or have absconded, or concealed himself, the period limited for the commencement of the action shall not begin to run, until he comes into the State, or while he is so absconded or concealed; and if after the cause of action accrues, he depart from the State, or abscond or conceal himself, the time of his absence or concealment shall not be computed as any part of the period within which the action must be brought.

Actions barred in another State are barred here.

§ 22. Where the cause of action has arisen in another State or country between non-residents of this State, and by the laws of the State or country where the cause of action

arose, an action cannot be maintained thereon by reason of lapse of time, no action can be maintained thereon in this State.

§ 23. If an action be commenced within due time, and a judgment therein for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action, within one year after such reversal or failure.

When judgment is reversed, one year to bring a new action.

§ 24. In any case founded on contract, when any part of the principal or interest shall have been paid, or an acknowledgement of an existing liability, debt, or claim, or any promise to pay the same, shall have been made, an action may be brought on such case within the period prescribed for the same, after such payment, acknowledgment or promise; but such acknowledgment or promise must be in writing, signed by the party to be charged thereby.

When payment, acknowledgment or promise revives the cause of action.

TITLE III.

PARTIES TO CIVIL ACTIONS.

§ 25. Every action must be prosecuted in the name of the real party in interest, except as otherwise provided in section twenty-seven.

Action to be in the name of the real party interested.

§ 26. In the case of an assignment of a thing in action, the action by the assignee shall be without prejudice to any set-off or other defence now allowed: but this section shall not apply to negotiable bonds, promissory notes, or bills of exchange, transferred in good faith and upon good consideration, before due.

Assignment of a thing in action not to prejudice a defence.

§ 27. An executor, administrator, guardian, trustee of an express trust, a person with whom, or in whose name, a contract is made for the benefit of another, or a person expressly authorised by statute, may bring an action without joining with him the person for whose benefit it is prosecuted. Officers may sue and be sued in such name as is authorised by law, and official bonds may be sued upon in the same way.

Executor or trustee may sue without the beneficiary.

§ 28. Where a married woman is a party, her husband must be joined with her; except, when the action concerns her separate property, she may sue without her husband, by her next friend.

Husband must join in action, except &c. When she may sue without him.

When the action is between herself and her husband, she may sue or be sued alone; but in every such action other than for a divorce or alimony, she shall prosecute and defend by her next friend.

How wife may defend.

§ 29. If a husband and wife be sued together, the wife may defend for her own right; and if the husband neglect to defend, she may defend for his right also.

Infant must sue by his guardian, or next friend.

§ 30. The action of an infant must be brought by his guardian or next friend. When the action is brought by his next friend, the court has power to dismiss it, if it is not for the benefit of the infant, or to substitute the guardian of the infant, or any person, as the next friend.

Guardian or next friend liable for costs and may testify.

§ 31. The guardian or next friend is liable for the costs of the action brought by him, and, when he is insolvent, the court may require security for them. Either may be a witness in an action brought by him.

Infant to defend by guardian.

§ 32. The defence of an infant must be by a guardian for the suit, who may be appointed by the court, in which the action is prosecuted, or by a judge thereof, or by a probate judge. The appointment cannot be made until after service of the summons in the action, as directed in this code.

Guardian, how appointed.

§ 33. The appointment may be made upon the application of the infant, if he be of the age of fourteen years, and apply within twenty days after the return of the summons. If he be under the age of fourteen, or neglect so to apply, the appointment may be made upon the application of any friend of the infant, or on that of the plaintiff in the action.

Who may be joined as plaintiffs.

§ 34. All persons having an interest in the subject of the action and in obtaining the relief demanded, may be joined as plaintiffs, except as otherwise provided in this title.

Who may be made defendants.

§ 35. Any person may be made a defendant, who has or claims an interest in the controversy, adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the question involved therein.

Parties united in interest must be joined.

§ 36. Of the parties to the action, those who are united in interest must be joined, as plaintiffs or defendants; but if the consent of one who should have been joined as plaintiff, cannot be obtained, he may be made a defendant, the reason being stated in the petition.

When one or more may defend for all.

§ 37. When the question is one of a common or general interest of many persons; or when the parties are very numerous, and it may be impracticable to bring them all before the court, one or more may sue or defend for the benefit of all.

When persons severally liable may all, or any of them, be included in one action.

§ 38. Persons severally liable upon the same obligation or instrument, including the parties to bills of exchange and promissory notes, may, all or any of them, be included in the same action, at the option of the plaintiff.

§ 39. An action does not abate by the death, marriage, or other disability of a party, or by the transfer of any interest therein, during its pendency, if the cause of action survive or continue. In case of the marriage of a female party, the fact being suggested on the record, the husband may be made a party with his wife; and in the case of the death or other disability of a party, the court may allow the action to continue by or against his representative or successor in interest. In case of any other transfer of interest, the action may be continued in the name of the original party; or the court may allow the person to whom the transfer is made, to be substituted in the action.

Actions not to abate by death, marriage, or other disability.

Proceedings in such cases.

§ 40. The court may determine any controversy between parties before it, when it can be done without prejudice to the rights of others, or by saving their rights; but when a determination of the controversy cannot be had without the presence of other parties, the court must order them to be brought in.

If controversy cannot be decided without prejudice to others, they must be brought in.

§ 41. When, in an action for the recovery of real or personal property, any person having an interest in the property, applies to be made a party, the court may order it to be done.

In an action for real or personal property, all interested may be made parties.

§ 42. Upon affidavit of a defendant before answer, in any action upon contract, or for the recovery of personal property, that some third party, without collusion with him, has or makes a claim to the subject of the action, and that he is ready to pay or dispose of the same, as the court may direct, the court may make an order for the safe-keeping, or for the payment, or deposit in court, or delivery of the subject of the action, to such person as it may direct, and an order requiring such third party to appear in a reasonable time and maintain or relinquish his claim against the defendant. If such third party being served with a copy of the order, by the sheriff, or such other person as the court may direct, fail to appear, the court may declare him barred of all claim in respect to the subject of the action, against the defendant therein. If such third party appear, he shall be allowed to make himself defendant in the action, in lieu of the original defendant, who shall be discharged from all liability to either of the other parties in respect to the subject of the action, upon his compliance with the order of the court for the payment, deposit, or delivery thereof.

If affidavit be made by defendant before answer, that another claims the property, court may make an order for its safe keeping, &c.

If third party fail to come in, he is barred.

He may be made defendant.

§ 43. The provisions of the last section shall be applicable to an action brought against a sheriff, or other officer, for the recovery of personal property taken by him under execution, or for the proceeds of such property so taken and sold by him. And the defendant in any such action shall be entitled to the benefit of those provisions against the party, in whose favor the execution issued, upon exhibiting to the court the process under which he acted, with his affidavit that

Last section to apply to sheriff and he to have benefit of it.

the property, for the recovery of which, or its proceeds, the action is brought, was taken under such process.

In action against officer for property, plaintiff in execution may be substituted.

§ 44. In an action against a sheriff, or other officer, for the recovery of property taken under an execution, and replevied by the plaintiff in such action, the court may, upon application of the defendant and of the party in whose favor the execution issued, permit the latter to be substituted as the defendant, security for the costs being given.

TITLE IV.

THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

Certain actions must be brought in the county where the property is situated.

§ 45. Actions for the following causes, must be brought in the county in which the subject of the action is situated, except as provided in section forty-six :

1. For the recovery of real property, or of an estate or interest therein :
2. For the partition of real property :
3. For the sale of real property under a mortgage, lien, or other incumbrance or charge.

Where the property is situated in two or more counties, the action may be brought in either; except as to the action to recover the possession of real property.

§ 46. If the real property, the subject of the action, be an entire tract and situated in two or more counties, or if it consist of separate tracts, situated in two or more counties, the action may be brought in any county in which any tract or part thereof, is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof, may be brought in either of such counties ; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

An action to compel specific performance, may be brought where defendant resides.

An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

Certain actions must be brought in the county where the cause arose.

§ 47. Actions for the following causes, must be brought in the county where the cause, or some part thereof, arose :

1. An action for the recovery of a fine, forfeiture, or penalty, imposed by a statute ; except that, when it is imposed for an offence committed on a river, or other stream of water, or road, which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water course, or road, and opposite to the place where the offence was committed :

2. An action against a public officer, for an act done by him in virtue or under color of his office, or for a neglect of his official duty :

3. An action on the official bond or undertaking of a public officer.

§ 48. An action other than one of those mentioned in the first three sections of this chapter, against a corporation created by the laws of this State, may be brought in the county in which it is situated, or has its principal office or place of business ; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

Where action may be brought against a corporation.

§ 49. An action against a railroad company, or an owner of a line of mail stages or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county, through or into which said road or line passes.

Where actions against a railroad, &c., may be brought.

§ 50. An action other than one of those mentioned in the first three sections of this chapter, against a turnpike road company, may be brought in any county in which any part of the road lies.

Where against a turnpike company.

§ 51. The provisions of this chapter, shall not apply in the case of any corporation created by a law of this State, whose charter prescribes the place, where alone a suit against such corporation may be brought.

Exception where the charter provides otherwise.

§ 52. An action other than one of those mentioned in the first three sections of this chapter, against a non-resident of this State or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found ; but if said defendant be a foreign insurance company, the action may be brought in any county, where the cause or some part thereof, arose.

Where an action against a non-resident may be brought.

§ 53. Every other action must be brought in the county in which the defendant or some one of the defendants, resides, or may be summoned.

Every other action where the defendant resides.

§ 54. In all cases, in which it shall be made to appear to the court, that a fair and impartial trial cannot be had in the county where the suit is pending, the court may change the place of trial to some adjoining county.

When place of trial may be changed.

TITLE V.

COMMENCEMENT OF A CIVIL ACTION.

- CHAPTER 1. Manner of commencing civil actions.
2. Service of Summons.

CHAPTER I.

MANNER OF COMMENCING CIVIL ACTIONS.

Civil action
commenced by
petition and
summons.

Precipe for sum-
mons.

Requisites of a
summons.

§ 55. A civil action must be commenced by filing in the office of the clerk of the proper court, a petition, and causing a summons to be issued thereon.

§ 56. The plaintiff shall, also, file with the clerk of the court, a precipe, stating the names of the parties to the action, and demanding that a summons issue thereon.

§ 57. The summons shall be issued by the clerk, shall be under the seal of the court, from which the same shall issue, and shall be signed by the clerk. Its style shall be, "The State of Ohio, _____ county," and it shall be dated the day it is issued. It shall be directed to the sheriff of the county, and command him to notify the defendant, or defendants, named therein, that he or they have been sued, and must answer the petition filed by the plaintiff, giving his name, at a time stated therein, or the petition will be taken as true, and judgment rendered accordingly: and where the action is for the recovery of money only, there shall be endorsed on the writ, the amount to be furnished in the precipe, for which, with interest, judgment will be taken, if the defendant fail to answer. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

Where action is
rightly brought
in any particu-
lar county, sum-
mons may issue
to any other
county.
When returna-
ble.

§ 58. Where the action is rightly brought in any county, according to the provisions of title four, a summons shall be issued to any other county, against any one, or more, of the defendants, at the plaintiff's request.

§ 59. Where the time for bringing parties into court is not fixed by statute, the summons shall be returnable on the second Monday after the day of its date; but where it is issued to any other than the county, in which the action is brought, it may be made returnable, at the option of the party having it issued, on the third or fourth Monday after its date. It shall state the day of the month on which it is returnable.

When further
writs may be
issued.

§ 60. When a writ is returned "not summoned," other writs may be issued, until the defendant, or defendants,

shall be summoned; and when defendants reside in different counties, writs may be issued to such counties at the same time.

CHAPTER II.

SERVICE OF SUMMONS.

ACTUAL SERVICE.

§ 61. The summons shall be served by the officer to whom it is directed, who shall endorse on the original writ, the time and manner of service. It may, also, be served by any person not a party to the action, appointed by the officer to whom it is directed. The authority of such person shall be endorsed on the writ. When the writ is served by a person appointed by the officer to whom it is directed, or when the service is made out of this State, the return shall be verified by oath or affirmation.

By whom summons to be served.

§ 62. The service shall be by delivering a copy of the summons to the defendant personally, or by leaving one at his usual place of residence, at any time before the return day.

Manner of service.

§ 63. In all cases, the return must state the time and manner of service.

Time and manner of service to be stated.

§ 64. The officer to whom the summons is directed, must return the same at the time therein stated.

When the officer to return the summons.

§ 65. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

Acknowledgment on writ, or appearance of defendant same as service. How served on a corporation.

§ 66. A summons against a corporation, may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof.

§ 67. Where the defendant is an incorporated insurance company, and the action is brought in a county, in which there is an agency thereof, the service may be upon the chief officer of such agency.

May be served on an agent of an insurance company.

§ 68. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

If a foreign corporation, on an agent in this State.

§ 69. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon

Infants, how served.

his guardian, or father; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or, if the minor be more than fourteen years of age, service on him alone, shall be sufficient. The manner of service may be the same as in the case of adults.

CONSTRUCTIVE SERVICE.

Service by publication.

§70. Service may be made by publication in either of the following cases :

In actions brought under the forty-fifth and forty-sixth sections of this code, where any or all the defendants reside out of the State :

In actions brought to establish or set aside a will, where any or all the defendants reside out of the State :

In actions brought against a non-resident of this State, or a foreign corporation, having in this State property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way :

In actions which relate to, or the subject of which is, real or personal property in this State, where any defendant has or claims a lien or interest, actual or contingent, therein, or the relief demanded consists wholly or partly in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation :

And in all actions, where the defendant being a resident of the State, has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

What affidavit necessary.

§ 71. Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this State, on the defendant or defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed, the party may proceed to make service by publication.

Publication how made, and what to contain.

§ 72. The publication must be made six consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county ; and if there be not, in some newspaper printed in this State, of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

When such service is complete, and how proved.

§ 73. Service by publication shall be deemed complete, when it shall have been made in the manner and for the time prescribed in the preceding section ; and such service shall be proved by the affidavit of the printer, or his foreman, or principal clerk, or other person knowing the same :

§ 74. In all cases where service may be made by publication, personal service of a copy of the summons and complaint may be made out of the State.

Service of a summons out of the State.

§ 75. A party against whom a judgment or order has been rendered without other service than by publication in a newspaper, may, at any time within five years after the date of the judgment or order, have the same opened, and be let in to defend. Before the judgment or order shall be opened, the applicant shall give notice to the adverse party of his intentions to make such an application, and shall file a full answer to the petition, pay all costs, if the court require them to be paid, and make it appear to the satisfaction of the court, by affidavit, that during the pendency of the action, he had no actual notice thereof, in time to appear in court and make his defence: but the title to any property, the subject of the judgment or order sought to be opened, which, by it or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open judgment, or order, as provided by this section, shall be allowed to present counter affidavits to show that during the pendency of the action, the applicant had notice thereof, in time to appear in court, and make his defence.

Judgment against party served by publication may be opened upon certain terms.

Effect on purchases.

§ 76. In actions where it shall be necessary to make the heirs or devisees of any deceased person, defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residence, are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service, as may be deemed proper: if service by publication be ordered, the publication shall not be less than six weeks.

How to proceed in actions against unknown heirs.

§ 77. Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows:

Proceedings where there are several defendants, and part only served.

1. If the action be against defendants jointly indebted upon contract, he may proceed against the defendants served unless the court otherwise direct:

2. If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

§ 78. When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of its pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title.

Pendency of action protects plaintiff's title.

Judgment to be
notice only in
the county
where rendered,
unless recorded
elsewhere.

§ 79. When any part of real property, the subject matter of an action, is situated in any other county or counties than the one in which the action is brought, a certified copy of the judgment in such action must be recorded in the recorder's office of such other county or counties, before it shall operate therein as notice, so as to charge third persons, as provided in the preceding section. It shall operate as such notice, without record, in the county where it is rendered; but this section shall not apply to actions or proceedings under any statute now in force, which does not require such record.

TITLE VI.

JOINDER OF ACTIONS.

What causes of
action may be
joined in the
same action.

§ 80. The plaintiff may unite several causes of action in the same petition, whether they be such as have heretofore been denominated legal or equitable or both, when they are included in either one of the following classes:

1. The same transaction; or transactions connected with the same subject of action:
2. Contracts, express or implied:
3. Injuries, with or without force, to person and property, or either:
4. Injuries to character:
5. Claims to recover the possession of personal property, with or without damages for the withholding thereof:
6. Claims to recover real property, with or without damages for the withholding thereof, and the rents and profits of the same:
7. Claims against a trustee, by virtue of a contract or by operation of law.

Same.

§ 81. The causes of action so united, must affect all the parties to the action, and not require different places of trial.

TITLE VII.

PLEADINGS IN CIVIL ACTIONS.

- CHAPTER 1.** Pleadings in general.
2. The Petition.
 3. Demurrer.
 4. Answer.
 5. Reply.
 6. General Rules of Pleading.
 7. Mistakes in Pleading and Amendments.

CHAPTER I.

PLEADINGS IN GENERAL.

§ 82. The pleadings are the written statements by the parties of the facts, constituting their respective claims and defences.

Pleadings.

§ 83. The rules of pleading, heretofore existing in civil actions, are abolished; and hereafter the forms of pleading in civil actions in courts of record, and the rules by which their sufficiency may be determined, are those prescribed by this code.

Rules of Pleading heretofore existing abolished.

§ 84. The only pleadings allowed, are,

1. The petition by the plaintiff:
2. The answer or demurrer by the defendant:
3. The demurrer, or reply by the plaintiff.

Pleadings allowed by Code.

CHAPTER II.

THE PETITION.

§ 85. The petition must contain,

1. The name of the court and the county in which the action is brought, and the names of the parties, plaintiff and defendant, followed by the word "Petition:"

Petition, what to contain.

2. A statement of the facts constituting the cause of action, in ordinary and concise language, and without repetition:

3. A demand of the relief to which the party supposes himself entitled. If the recovery of money be demanded, the amount thereof shall be stated; and if interest thereon be claimed, the time from which interest is to be computed, shall be also stated.

§ 86. Where the petition contains more than one cause of action, each shall be separately stated and numbered.

Each cause of action to be separately stated and numbered

CHAPTER III.

DEMURRER.

When the defendant may demur.

§ 87. The defendant may demur to the petition only when it appears on its face, either,

1. That the court has no jurisdiction of the person of the defendant, or the subject of the action :
2. That the plaintiff has not legal capacity to sue :
3. That there is another action pending between the same parties for the same cause :
4. That there is a defect of parties, plaintiff or defendant :
5. That several causes of action are improperly joined :
6. That the petition does not state facts sufficient to constitute a cause of action.

Demurrer must specify grounds of objection.

§ 88. The demurrer shall specify distinctly the grounds of objection to the petition. Unless it do so, it shall be regarded as objecting only, that the petition does not state facts sufficient to constitute a cause of action.

Objection not appearing on face of petition may be taken by answer. When objection deemed waived.

§ 89. When any of the defects enumerated in section eighty-seven, do not appear upon the face of the petition, the objection may be taken by answer ; and if no objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, except only the objection to the jurisdiction of the court, and that the petition does not state facts sufficient to constitute a cause of action.

If causes of action be misjoined, court may direct separate suits.

§ 90. When a demurrer is sustained on the ground of misjoinder of several causes of action, the court, on motion of the plaintiff, shall allow him, with or without costs in its discretion, to file several petitions, each including such of said causes of action as might have been joined ; and an action shall be docketed for each of said petitions, and the same shall be proceeded in without further service.

Defendant may answer part and demur part.

§ 91. The defendant may demur to one or more of the several causes of action stated in the petition, and answer as to the residue.

CHAPTER IV.

ANSWER.

The answer, and what it must contain.

§ 92. The answer shall contain

1. A general or specific denial of each material allegation of the petition controverted by the defendant:
2. A statement of any new matter constituting a defence, counterclaim or set-off, in ordinary and concise language and without repetition.

§ 93. The defendant may set forth in his answer as many grounds of defence, counterclaim and set-off, as he may have, whether they be such as have been heretofore denominated legal or equitable, or both. Each must be separately stated and numbered, as they must refer in an intelligible manner to the causes of action which they are intended to answer.

Different grounds of defence, counterclaims, &c. may be set forth in the answer.

§ 94. The counterclaim, mentioned in the last section, must be one existing in favor of a defendant, and against a plaintiff, between whom a several judgment might be had in the action, and arising out of the contract or transaction set forth in the petition as the foundation of the plaintiff's claim, or connected with the subject of the action.

Counterclaim, of what it consists.

§ 95. If the defendant omit to set up the counterclaim or set-off, he cannot recover costs against the plaintiff in any subsequent action thereon; but this section shall not apply to causes of action which are stricken out of or withdrawn from the answer, as provided in sections ninety-six, and one hundred and nineteen.

No costs recoverable on counterclaim or set-off in a proper case.

§ 96. When it appears that a new party is necessary to a final decision upon the counterclaim, the court may either permit the new party to be made by a summons, to reply to the counterclaim, or may direct the counterclaim to be stricken out of the answer, and made the subject of a separate action.

New party, to be made if necessary.

§ 97. A set-off can only be pleaded in an action founded on contract, and must be a cause of action arising upon contract or ascertained by the decision of the court.

Set-off, what and when it can be pleaded.

§ 98. When it appears that a new party is necessary to a final decision upon the set-off, the court shall permit the new party to be made, if it also appear, that owing to the insolvency or non-residence of the plaintiff, or other cause, the defendant will be in danger of losing his claim, unless permitted to use it as a set-off.

New party to be made if necessary.

§ 99. When cross-demands have existed between persons under such circumstances, that if one had brought an action against the other, a counterclaim or set-off could have been set up, neither can be deprived of the benefit thereof by the assignment or death of the other, but the two demands must be deemed compensated, so far as they equal each other.

When cross demands are to be deemed compensated.

§ 100. The guardian of an infant or person of an unsound mind, or attorney for a person in prison, shall deny in the answer all the material allegations of the petition prejudicial to such defendant.

Guardian, attorney, &c., to file answer denying allegation of petition.

CHAPTER V.

REPLY.

The reply, in what cases it can be made. What the reply may contain.

§ 101. There shall be no reply, except upon the allegation of a counterclaim or set-off in the answer.

§ 102. When the answer contains new matter constituting a counterclaim or set-off, the plaintiff may reply to such new matter, denying generally or specifically each allegation controverted by him; and he may allege, in ordinary and concise language and without repetition, any new matter not inconsistent with the petition, constituting a defence to such new matter in the answer; or he may demur to the same for insufficiency, stating in his demurrer the grounds thereof: and he may demur to one or more of such defences set up in the answer, and reply to the residue.

CHAPTER VI.

GENERAL RULES OF PLEADING.

Times for pleading.

§ 103. The answer or demurrer by the defendant shall be filed on or before the third Saturday, and the reply or demurrer by the plaintiff, on or before the fifth Saturday, after the return day of the summons or service by publication.

The time for pleading may be extended.

§ 104. The court, or the judge thereof in vacation, for good cause shown, may extend the time for filing an answer or reply, upon such terms as may be just.

Pleadings to be subscribed.

§ 105. Every pleading in a court of record, must be subscribed by the party or his attorney.

Pleadings to be verified.

§ 106. Every pleading of fact must be verified by the affidavit of the party, his agent or attorney. A pleading verified as herein required, shall not be used against a party in any criminal prosecution, or action, or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading; and such verification shall not make other or greater proof necessary on the side of the adverse party.

Certain pleadings are not to be verified.

§ 107. The verification mentioned in the last section, shall not be required to the answer of a guardian defending for an infant or person of unsound mind, or a person imprisoned; nor in any case, where the admission of the truth of a fact stated in the pleading, might subject the party to a criminal or penal prosecution.

One of several parties may verify.

§ 108. If there be several persons united in interest and pleading together, the affidavit may be made by any one of such parties.

§ 109. The affidavit shall be sufficient, if it state that the affiant believes the facts stated in the pleading to be true.

Of what verification shall consist.

§ 110. In all cases where the party pleading is a non-resident of the county in which the action is brought, or if he shall be absent from the county where the pleading is filed, an affidavit made before filing the pleading, stating the substance of the facts afterwards inserted in the pleading, shall be a sufficient verification. Such affidavit shall be filed with the pleading intended to be verified thereby.

Verification of non-resident of the county.

§ 111. The affidavit verifying pleadings, may be made before any person before whom a deposition might be taken, and must be signed by the party making the same; and the officer before whom the same was taken, shall certify that it was sworn to or affirmed before him, and signed in his presence. The certificate of such officer, signed officially by him, shall be evidence that the affidavit was duly made, that the name of the officer was written by himself, and that he was such officer.

Verification to be signed and certified.

§ 112. The verification of the pleading does not apply to the amount claimed, except in actions founded on contracts, express or implied, for the payment of money only.

When verification shall apply to the amount claimed.

§ 113. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney, only,

Verification by agent or attorney.

1. When the facts are within the personal knowledge of the agent or attorney:

2. When the plaintiff is an infant, or of unsound mind, or imprisoned:

3. When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney:

4. When the party is not a resident of, or is absent from the county.

§ 114. In the construction of any pleading, for the purpose of determining its effect, its allegations shall be liberally construed, with a view to substantial justice between the parties.

Pleadings to be liberally construed.

§ 115. All fictions in pleading are abolished.

Fictions abolished.

§ 116. The title of a cause shall not be changed in any of its stages.

No change of title to cause.

§ 117. If the action, counterclaim, or set-off be founded on an account or on a note, bill, or other written instrument, as evidence of indebtedness, a copy thereof must be attached to and filed with the pleading. If not so attached and filed, the reason thereof must be shown in the pleading.

Copies of written instruments to be filed with pleadings.

§ 118. If redundant or irrelevant matter be inserted in any pleading, it may be stricken out, on motion of the party prejudiced thereby. And when the allegations of a pleading are so indefinite and uncertain, that the precise nature of

Redundant or irrelevant matter may be stricken out.

the charge or defence is not apparent, the Court may require the pleading to be made definite and certain by amendment.

Counterclaim, or set-off may be made the subject of a separate proceeding.

§ 119. The court, at any time before the final submission of the cause, on motion of the defendant, may allow a counterclaim or set-off, set up in the answer, to be withdrawn, and the same may become the subject of another action. On motion of either party, to be made at the time such counterclaim or set-off is withdrawn, an action on the same shall be docketed and proceeded in as in like cases after process served; and the court shall direct the time and manner of pleading therein. If an action be not so docketed, it may afterwards be commenced in the ordinary way.

Facts conferring jurisdiction need not be stated.

§ 120. In pleading a judgment or other determination of a court or officer of special jurisdiction, it shall be sufficient to state that such judgment or determination was duly given or made. If such allegation be controverted, the party pleading must establish, on the trial, the facts conferring jurisdiction.

Performance of conditions precedent need not be specially stated.

§ 121. In pleading the performance of conditions precedent in a contract, it shall be sufficient to state, that the party duly performed all the conditions on his part; and if such allegation be controverted, the party pleading must establish, on the trial, the facts showing such performance.

How written instruments for the payment of money may be stated.

§ 122. In an action, counterclaim, or set-off founded upon an account, promissory note, bill of exchange or other instrument for the unconditional payment of money only, it shall be sufficient for a party to give a copy of the account or instrument, with all credits and the indorsements thereon, and to state that there is due to him, on such account or instrument, from the adverse party, a specified sum, which he claims with interest. When others than the makers of a promissory note, or the acceptors of a bill of exchange, are parties in the action, it shall be necessary to state, also, the kind of liability of the several parties, and the facts, as they may be, which fix their liability.

Pleading statutes.

§ 123. In pleading a private statute, or a right derived therefrom, it shall be sufficient to refer to such statute by its title, and the day of its passage, and the court shall thereupon take judicial notice thereof.

Extrinsic facts need not be stated in action for slander or libel.

§ 124. In an action for a libel or slander, it shall be sufficient to state generally, that the defamatory matter was published or spoken of the plaintiff, and if the allegation be denied, the plaintiff must prove on the trial, the facts, showing that the defamatory matter was published, or spoken of him.

Defendant may allege truth of the matter, and mitigating circumstances.

§ 125. In the actions mentioned in the last section, the defendant may allege the truth of the matter charged as defamatory, and may prove the same, and any mitigating circumstances to reduce the amount of damages, or he may prove either.

§ 126. In an action for the recovery of real property, it shall be described with such convenient certainty, as will enable an officer holding an execution, to identify it.

Real property must be described in petition.

§ 127. Every material allegation of the petition not controverted by the answer, and every material allegation of new matter in the answer, constituting a counter claim, or set-off, not controverted by the reply, shall, for the purposes of the action, be taken as true, but the allegation of new matter in the answer, not relating to a counter claim or set-off, or of new matter in the reply, shall be deemed to be controverted by the adverse party, as upon a direct denial or avoidance, as the case may require. Allegations of value, or of amount of damage, shall not be considered as true, by failure to controvert them.

Every material allegation not controverted to be taken as true.

§ 128. A material allegation in a pleading, is one essential to the claim or defence, which could not be stricken from the pleading, without leaving it insufficient.

What is a material allegation.

§ 129. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in the pleading.

Presumptions of law, &c., need not be stated.

§ 130. If an original pleading be lost, or withheld by any person, the court may allow a copy thereof to be substituted.

Copies of pleadings may be substituted for original ones.

CHAPTER VII.

MISTAKES IN PLEADING, AND AMENDMENTS.

§ 131. No variance between the allegation in a pleading and the proof, is to be deemed material, unless it have actually misled the adverse party to his prejudice, in maintaining his action or defence upon the merits. Whenever it is alleged, that a party has been so misled, that fact must be proved to the satisfaction of the court, and it must also be shown in what respect he has been misled; and thereupon the court may order the pleading to be amended, upon such terms as may be just.

Variance in pleading not material, unless the adverse party has been misled.

§ 132. When the variance is not material, as provided in the last section, the court may direct the fact to be found, according to the evidence, and may order an immediate amendment without costs.

Fact to be found according to evidence and amendment made.

§ 133. When, however, the allegation of the claim or defence, to which the proof is directed, is unproved, not in some particular, or particulars only, but in its general scope and meaning, it is not to be deemed a case of variance within the last two sections, but a failure of proof.

If claim or defence is wholly unproved—failure of proof.

§ 134. The plaintiff may amend his petition without leave, at any time before the answer is filed, without prejudice to the proceeding; but notice of such amendment shall be served upon the defendant, or his attorney, and the

Plaintiff may amend his petition before answer.

defendant shall have the same time to answer or demur thereto, as to the original petition.

Amendments on demurrer.

§ 135. At any time within ten days after a demurrer is filed, the adverse party may amend, of course, on payment of costs since filing the defective pleading. Notice of filing an amended pleading shall be forthwith served upon the other party, who shall have the same time thereafter to answer, or reply thereto, as to an original pleading.

Party may reply after his demurrer is overruled.

§ 136. Upon a demurrer being overruled, the party who demurred, may answer or reply, if the court be satisfied that [he] has a meritorious claim, or defence, and did not demur for delay.

Court may authorize amendments of pleadings at anytime.

§ 137. The court may, before, or after judgment, in furtherance of justice, and on such terms as may be proper, amend any pleading, process or proceeding, by adding or striking out the name of any party, or by correcting a mistake in the name of a party, [or] a mistake in any other respect, or by inserting other allegations material to the case, or, when the amendment does not change substantially the claim or defence, by conforming the pleading or proceeding to the facts proved. And whenever any proceeding taken by a party fails to conform, in any respect, to the provisions of this code, the court may permit the same to be made conformable thereto, by amendment.

Court shall disregard all errors or defects not affecting substantial rights.

§ 138. The court, in every stage of an action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party; and no judgment shall be reversed, or affected, by reason of such error, or defect.

If demurrer sustained, amendments may be allowed.

§ 139. If the demurrer be sustained, the adverse party may amend, if the defect can be remedied, by way of amendment, with, or without costs, as the court in its discretion shall direct.

Court may grant further time for trial, if necessary after amendment.

§ 140. When either party shall amend any pleading, or proceeding, and the court shall be satisfied by affidavit, or otherwise, that the adverse party could not be ready for trial in consequence thereof, a continuance may be granted to some day in term, or to another term of the court.

Suing a party by a fictitious name, when allowed.

§ 141. When the plaintiff shall be ignorant of the name of a defendant, such defendant may be designated in any pleading or proceeding by any name and description, and when his true name is discovered, the pleading, or proceeding may be amended accordingly. The plaintiff in such case, must state, in the verification of his petition, that he could not discover the true name, and the summons must contain the words, "real name unknown," and a copy thereof must be served personally upon the defendant.

§ 142. Either party may be allowed on notice, and on such terms as to costs, as the court may prescribe, to file a supplemental petition, answer, or reply, alleging facts material to the case, occurring after the former petition, answer, or reply.

Supplemental petition, answer or reply.

§ 143. Whenever two or more actions are pending in the same court, which might have been joined, the defendant may, on motion and notice to the adverse party, require him to show cause why the same shall not be consolidated, and if no such cause be shown, the said several actions shall be consolidated.

Actions which might have been joined, may be consolidated, by order of court.

§ 144. The order for consolidation may be made by the court, or by a judge thereof in vacation.

By whom the order may be made.

PROVISIONAL REMEDIES.

- CHAPTER 1. Arrest and bail.
 2. Replevin of property.
 3. Attachment.
 4. Injunction.
 5. Receivers and other provisional remedies.

CHAPTER I.

ARREST AND BAIL.

§ 145. A defendant in a civil action, can be arrested before, and after judgment, in the manner prescribed by this code, and not otherwise; but this provision does not apply to proceedings for contempt; nor does it apply to actions or judgments prosecuted in the name of the State of Ohio, to recover fines or penalties for crimes, misdemeanors, or offences.

Arrest in civil actions only as prescribed by this Code.

§ 146. An order for the arrest of the defendant, shall be made by the clerk of the court in which the action is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent, or attorney, made before any judge of any court of the State, or clerk thereof, or justice of the peace, stating the nature of the plaintiff's claim, that it is just, and the amount thereof, as nearly as may be, and establishing one or more of the following particulars:

By whom an order of arrest to be made, and when to be made.

1. That the defendant has removed, or begun to remove any of his property out of the jurisdiction of the court, with intent to defraud his creditors:

2. That he has begun to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors :

3. That he has property, or rights of action, which he fraudulently conceals :

4. That he has assigned, removed, or disposed of, or has begun to dispose of his property, or a part thereof, with intent to defraud his creditors :

5. That he fraudulently contracted the debt, or incurred the obligation, for which suit is about to be, or has been brought :

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

Not to be issued unless bond is given.

§ 147. The order of arrest shall not be issued by the clerk, until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking, to the effect, that the plaintiff shall pay to the defendant all damages, which he may sustain, by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim stated in the affidavit.

When it may issue.

§ 148. The order may be made to accompany the summons, or at any time afterwards, before judgment.

To whom the order of arrest to be delivered, and its contents.

§ 149. The order of arrest shall be addressed, and delivered, with a copy of the affidavit, to the sheriff. The order shall state the names of the parties, the court in which the action is brought, and the amount of the plaintiff's claim specified in the affidavit, and shall require the sheriff to arrest the defendant, and hold him to bail in double the sum stated in the affidavit, and to make return of the order on a day to be named therein, with the undertaking of the bail, if any be given.

When returnable.

§ 150. The return day of the order of arrest, when issued at the commencement of the suit, shall be the same as that of the summons : when issued afterwards, it shall be fifteen days after it issued.

How executed.

§ 151. The sheriff shall execute the order by arresting the defendant and delivering to him a copy thereof, and of the affidavit. If the defendant cannot be found before the return day, the plaintiff shall be entitled to further orders, without other affidavit, or undertaking, until the defendant is arrested ; but orders of arrest shall not be issued to any other than the county, in which the action is brought.

What to be done with the defendant.

§ 152. The defendant, when arrested, shall be committed by the sheriff to the jail of the county, and kept in custody, until discharged by law.

Defendant may deposit money and be discharged.

§ 153. The defendant may before, or after giving bail, deposit in the hands of the sheriff, or in court, the amount of money mentioned in the order of arrest ; whereupon

he shall be discharged, or his bail, if any be given, shall be released.

§ 154. The sheriff shall pay into court the money received by him in lieu of bail; if received in vacation, he shall pay it in on the first day of the next term, if received during a term, he shall pay it in immediately.

Money deposited to be paid in to court.

§ 155. The court shall make proper orders for the safe keeping of money deposited in lieu of bail. It may direct the sheriff to keep the money, and after final judgment in the action, shall order it to be paid to the party entitled thereto, according to the result.

Court to have control of money.

§ 156. Money so deposited with the sheriff, in lieu of bail, or directed by the court to be kept by him, shall be held upon his official responsibility; and he and his sureties shall be liable, and may be proceeded against, for any default in relation thereto, as in other cases of delinquency.

Sheriff and sureties liable for such money.

§ 157. Bail may be given by the defendant on his arrest, or at any time afterwards, before judgment. It shall be done by causing one or more sufficient bail to execute a written undertaking to the plaintiff, in the presence of the sheriff, to the effect that, if judgment shall be rendered in the action against the defendant, he will render himself amenable to the process of the court thereon. The undertaking, when accepted, shall be returned to the clerk's office, and the defendant discharged.

Defendant may give bail. How done.

§ 158. The plaintiff, or his attorney, may object to the bail for insufficiency, at any time within ten days after the undertaking of the bail has been given; within such time he shall serve upon the sheriff a written notice that he does not accept the bail, or he shall be deemed to have accepted it, and the sheriff shall be exonerated from liability. When the undertaking is given after the return of the order of arrest, the plaintiff shall have notice thereof.

Plaintiff may object to bail.

§ 159. On the receipt of such notice, the sheriff, or defendant may, within ten days thereafter, give to the plaintiff, or his attorney, notice in writing of the justification of the same, or other bail, before a judge, or clerk of the court, in which the action is brought, a probate judge, or justice of the peace, at a specified time and place: the time to be not less than five, nor more than ten days thereafter. In case other bail be given, there must be a new undertaking.

Notice of justification.

§ 160. For the purpose of justification, each of the bail must attend before the proper officer at the time and place mentioned, and may be examined on oath or affirmation touching his sufficiency, in such manner as the officer may think proper.

Manner of justification.

Allowance of bail.

§ 161. If the officer find the bail sufficient, he shall endorse his allowance on the undertaking, and cause the same to be filed with the clerk; and the sheriff shall thereupon be discharged from liability.

Sheriff, when liable as bail, and how discharged.

§ 162. If after being arrested, the defendant escape or be rescued, or bail be not taken or be adjudged insufficient, or a deposit be not made, the sheriff shall be liable as bail. But he may discharge himself from liability by putting in sufficient bail at any time before judgment.

Liability of sheriff, how fixed and sued.

§ 163. The return of "not found," upon an execution against the body of the defendant, shall be necessary to fix the liability of the sheriff as bail, which liability shall be the amount of the judgment, interest and costs. This liability can be enforced only in a separate action against him, or against him and his sureties on his official bond, as in other cases of delinquency.

Bail adjudged insufficient liable to sheriff.

§ 164. The bail adjudged insufficient, shall be liable to the sheriff for the damages he may sustain by reason of such insufficiency.

Liability of bail, how fixed and sued.

§ 165. The liability of the bail shall be fixed in the manner provided in section one hundred and sixty-three, for fixing the liability of the sheriff as bail, and the bail can be proceeded against in an action only.

Defendant may be surrendered in discharge of bail

§ 166. A surrender of the defendant to the sheriff of the county in which he was arrested, with a delivery of a certified copy of the undertaking of the bail, whether such surrender be made by the defendant himself or by his bail, shall discharge the bail; such surrender may be made at any time before the return day of the summons in an action against the bail. The sheriff shall give to the bail a written acknowledgment of the surrender, and hold the defendant in his custody upon said copy of the undertaking of the bail, as upon an order of arrest. On the production of the sheriff's acknowledgment of the surrender to the clerk of the court, an exoneration of the bail shall be entered on his undertaking.

Bail may arrest the defendant.

§ 167. For the purpose of surrendering the defendant, the bail, at any time or place, before he is finally charged, may himself arrest him, or by a written authority endorsed on a certified copy of the undertaking, may empower any person of suitable age and discretion to do so.

For what causes, bail may be exonerated.

§ 168. The bail will be exonerated by the death of the defendant, or his imprisonment in a state prison, or by his legal discharge from the obligation to render himself amenable to the process of the court, or by his surrender to the sheriff of the county in which he was arrested in execution thereof, within the time fixed in section one hundred and sixty-six, or within such further time as the court in which the action is pending, may allow.

Bail may be substituted for a deposit of money.

§ 169. If money be deposited by the defendant in his discharge, bail may be given and justified upon notice as pre-

scribed in section one hundred and fifty-nine, at any time before judgment; and thereupon the court in which the action is brought, on being satisfied that the bail has been given and adjudged sufficient, shall direct that the money deposited be refunded to the defendant, and it must be refunded accordingly.

§ 170. If, at any time before or after judgment against the bail, proceedings in error are commenced, on the judgment against the principal in the suit, in which their undertaking was taken, the court may on motion, stay proceedings against such bail for a reasonable time, on their paying all the costs that have accrued against them: and if, on such proceedings, the judgment against the principal shall be reversed, and the principal discharged from said suit, the bail shall be discharged from the undertaking.

When proceedings against bail may be stayed, and bail discharged.

§ 171. A defendant arrested, may at any time before the justification of the bail, apply on motion, to the court in which the suit is brought, if in session, and in vacation, to a judge thereof, or to any judge of a court of record of the State, to vacate the order of arrest, or to reduce the amount of the bail. Reasonable notice of such motion must be given to the plaintiff.

Defendant may move to vacate the order of arrest or reduce the amount of bail.

§ 172. If the motion be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of arrest was made.

Motion may be supported and opposed by affidavits.

§ 173. Any person causing another to be committed to jail under the provisions of this chapter, shall be liable, in the first instance, for the jail fees, and shall, if required by the jailor, pay such fees weekly in advance; and such fees, so paid, shall be a part of the costs of the case.

Jail fees, how paid.

CHAPTER II.

REPLEVIN OF PROPERTY.

§ 174. The plaintiff in an action to recover the possession of specific personal property, may at the commencement of the suit or at any time before answer, claim the immediate delivery of such property, as provided in this chapter.

When delivery of personal property may be claimed.

§ 175. An order for the delivery of property to the plaintiff, shall be made by the clerk of the court in which the action is brought, when there is filed in his office, an affidavit of the plaintiff, his agent, or attorney, showing,

Affidavit of plaintiff and causes for delivery.

1. A description of the property claimed:

2. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property :

3. That the property is wrongfully detained by the defendant :

4. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against said plaintiff.

To whom the order of delivery to be directed, and its contents.

§ 176. The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

When returnable.

§ 177. The return day of the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons ; when issued afterwards, it shall be twenty days after it issued.

How executed.

§ 178. The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detainer of the property, or leave such copy at his usual place of residence.

Plaintiff to give bond.

§ 179. The sheriff or other officer, shall not deliver to the plaintiff, his agent, or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in, at least, double the value of the property taken, to the effect, that the plaintiff shall duly prosecute the action and pay all costs and damages, which may be awarded against him. The undertaking shall be returned with the order.

Value of property, how fixed.

§ 180. For the purpose of fixing the amount of the undertaking, the value of the property taken, shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

Officer's duty and liability as to the property, if plaintiff fail to give bond.

§ 181. If the undertaking required by section one hundred and seventy-nine, be not given, within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer, deliver any property, so taken, to the plaintiff, his agent, or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Qualification of sureties, &c.

§ 182. The defendant may within twenty-four hours from the time the undertaking referred to in the preceding section is

given by the plaintiff, give notice to the sheriff, that he excepts to the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice, as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties until the objection to them is waived as above provided or until they justify. The property shall be delivered to the plaintiff when the undertaking required by section one hundred and seventy-nine has been given.

§ 183. If the property have been delivered to the plaintiff and judgment be rendered against him, on demurrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied, that said property was the property of the defendant, at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same, at such time, then, and in either case, they shall assess such damages for the defendant, as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

Proceedings in
the action.

§ 184. In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined, for the defendant, they shall also find, whether the defendant had the right of property or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages, as they think right and proper for the defendant; for which with costs of suit, the court shall render judgment for the defendant.

Proceedings in
the action.

§ 185. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which with costs of suit, the court shall render judgment for the defendant.

Proceedings in
the action.

§ 186. When the property claimed, has not been taken, or has been returned to the defendant by the sheriff, for want of the undertaking required by section one hundred and seventy-nine, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and seventy-nine, the plaintiff shall pay all costs made by taking the same.

Proceedings in
the action.

§ 187. An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same

Orders may be
issued to different
counties.

time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

When officer
may break open
buildings.

§ 188. The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure, in which the property claimed or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

When action
may be brought
on plaintiff's
bond.

§ 189. No suit shall be instituted on the undertaking given under section one hundred and seventy-nine, before an execution issued on a judgment in favor of the defendant in the action, shall have been returned, that sufficient property, whereon to levy and make the amount of such judgment, cannot be found in the county.

When order
may be set
aside at clerk's
costs, &c.

§ 190. Any order for the delivery of property issued under section one hundred and seventy-five, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall, also, be liable in damages to the party injured.

CHAPTER III.

ATTACHMENT.

ARTICLE 1. General Attachments.

2. Attachments in certain actions.

ARTICLE I.

GENERAL ATTACHMENTS.

SUBDIVISION 1. Grounds of attachment.

2. How attachment obtained.
3. Execution and return thereof.
4. Disposition of attached property.
5. Proceedings upon attachment.
6. General Provisions.

SUBDIVISION I.

GROUND OF ATTACHMENT.

Grounds upon
which plaintiff
may have at-
tachment.

§ 191. The plaintiff in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated.

1. When the defendant, or one of several defendants, is a foreign corporation or a non-resident of this State: or

2. Has absconded with the intent to defraud his creditors: or

3. Has left the county of his residence, to avoid the service of a summons : or

4. So conceals himself, that a summons cannot be served upon him : or

5. Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors : or

6. Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors : or

7. Has property, or rights in action, which he conceals : or

8. Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors : or

9. Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation or a non-resident of this State, for any claim other than a debt or demand arising upon contract, judgment, or decree.

SUBDIVISION II.

HOW AN ATTACHMENT IS OBTAINED.

§ 192. An order of attachment shall be made by the clerk of the court, in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office, an affidavit of the plaintiff, his agent, or attorney, showing,

Affidavit necessary.

1. The nature of the plaintiff's claim :

2. That it is just :

3. The amount which the affiant believes the plaintiff ought to recover : and

4. The existence of some one of the grounds for an attachment, enumerated in the preceding section.

§ 193. When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of this State, the order of attachment may be issued without an undertaking.

When bond not required.

In all other cases, the order of attachment shall not be issued by the clerk, until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages, which he may sustain by reason of the attachment, if the order be wrongfully obtained.

When bond required.

Order of attachment, how directed and executed.

§ 194. The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks or interest in stocks, rights, credits, moneys, and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

Orders of attachment may issue to several counties.

§ 195. Orders of attachment may be issued to the sheriffs of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession: but such only as have been executed, shall be taxed in the costs, unless otherwise directed by the court.

When returnable.

§ 196. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

SUBDIVISION III.

EXECUTION AND RETURN THEREOF.

When there are several, to be executed in the order received.

§ 197. When there are several orders of attachment against the same defendant, they shall be executed in the order in which they were received by the sheriff.

How order executed.

§ 198. The order of attachment shall be executed by the sheriff without delay. He shall go to the place, where the defendant's property may be found, and there in the presence of two freeholders of the county, declare that by virtue of said order, he attaches said property at the suit of such plaintiff: and the officer, with the said freeholders, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and freeholders, and returned with the order.

Where the property attached, is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order.

Where it is personal property, and can be come at, he shall take the same into his custody, and hold it subject to the order of the court.

When property attached, may be delivered to the person with whom it is found.

§ 199. The sheriff shall deliver the property attached, to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound, in double the appraised value thereof, that the property or its appraised value in money, shall be forthcoming to answer the judgment of the court in the action;

but if it shall appear to the court, that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person so bound.

§ 200. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to and does believe, that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee, a copy of the order of attachment, with a written notice, that he appear in court, at the return of the order of attachment, and answer, as provided in section two hundred and fourteen.

Proceedings
against a gar-
nishee.

§ 201. The copy of the order and the notice shall be served upon the garnishee, as follows : If he be a person, they shall be served upon him personally, or left at his usual place of residence ; if a corporation, they shall be left with the president, or other head of the same, or the secretary, cashier, or managing agent thereof.

How served:

§ 202. Different attachments of the same property may be made by the same officer, and one inventory and appraisal shall be sufficient, and it shall not be necessary to return the same with more than one order.

Different at-
tachments may
be made by the
same officer.

§ 203. Where the property is under attachment, it shall be attached under subsequent orders as follows :

1. If it be real property, it shall be attached, in the manner prescribed in section one hundred and ninety-eight.

2. If it be personal property, it shall be attached, as in the hands of the officer, and subject to any previous attachment.

3. If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section two hundred.

§ 204. The officer shall return upon every order of attachment, what he has done under it. The return must show the property attached and the time it was attached. When garnishees are served, their names and the time each was served, must be stated. The officer shall, also, return with the order all undertakings given under it.

Form of return.

§ 205. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys, and credits in his hands, or due from him to the defendant, from the time he is served with the written notice mentioned in section two hundred ; but where property is attached in the hands of a consignee, his lien thereon shall not be affected by the attachment.

When property
and garnishee
bound.

SUBDIVISION IV.

DISPOSITION OF ATTACHED PROPERTY.

Receiver may
be appointed.

§ 206. The court or any judge thereof during vacation, may, on the application of the plaintiff, and on good cause shown, appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give an undertaking to the State of Ohio, in such sum as the court or judge may direct, and with such security as shall be approved by the clerk of such court, for the faithful performance of his duty, as such receiver, and to pay over all money and account for all property, which may come into his hands by virtue of his appointment, at such times and in such manner as the court may direct.

Shall take possession of books of accounts &c., and settle and collect the same.

§ 207. Such receiver shall take possession of all notes, due-bills, books of account, accounts, and all other evidences of debt, that have been taken by the sheriff or other officer, as the property of the defendant in attachment, and shall proceed to settle and collect the same. For that purpose, he may commence and maintain actions in his own name as such receiver; but in such actions, no right of defence shall be impaired or affected.

Shall give notice of his appointment.

§ 208. Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands or due from them to the defendant in attachment, and shall account therefor to the receiver.

Shall report his proceedings.

§ 209. Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him and property which may come into his hands, subject to the order of the court.

When a receiver is not appointed the sheriff shall perform the same duties.

§ 210. Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and six, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name, as such officer. He may be required to give security, other than his official undertaking.

Property attached, how disposed of.

§ 211. The court shall make proper orders for the preservation of the property, during the pendency of the suit. It may direct a sale of property, when, because of its perishable nature or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be

ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirement and responsibilities of himself and sureties, as are provided in respect to money deposited in lieu of bail.

SUBDIVISION V.

PROCEEDINGS UPON ATTACHMENT.

§ 212. If the defendant, or other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties, resident in the county, to be approved by the court, in double the amount of the plaintiff's claim, as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

Defendant may discharge attachment any time before judgment.

§ 213. The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court: the sureties in either case, to be approved by the officer, before whom the undertaking is executed.

May be done in vacation.

§ 214. The garnishee shall appear as follows. If the order of attachment be returned during a term of the court and twenty days before the close thereof, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer, under oath, all questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and in the case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of notice.

Garnishee shall appear and make disclosure.

§ 215. A garnishee may pay the money owing to the defendant by him, to the sheriff having the order of attachment, or into the court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond

Garnishee may pay money due, to sheriff or into court.

those caused by his resistance of the claim against him ; and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

When garnishee
may be attached
for contempt.

§ 216. If the garnishee do not appear in court and answer, as required by section two hundred and fourteen, the court may proceed against him by attachment as for a contempt.

Disposition of
property in
hands of garnishee.

§ 217. If the garnishee appear and answer, and it is discovered on his examination, that, at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the court may order the delivery of such property and the payment of the amount owing by the garnishee, into the court ; or the court may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct.

When plaintiff
may appear in
an action
against the garnishee.

§ 218. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff ; or if he fail to comply with the order of the court to deliver the property and pay the money owing, into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, by filing a petition in his own name, as in other cases, and causing a summons to be issued upon it ; and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

As to the action
against garnishee.

§ 219. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined ; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all the property, moneys, and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be

discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

§ 220. If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds, shall be returned to him.

§ 221. If judgment be rendered for the plaintiff, it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property and lands and tenements, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the court, under the same restrictions and regulations, as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

§ 222. The court may compel the delivery to the sheriff, for sale, of any of the attached property for which an undertaking may have been given, and may proceed summarily on such undertaking, to enforce the delivery of the property, or the payment of such sum as may be due upon the undertaking, by rules and attachments as in cases of contempt.

§ 223. The court may order the sheriff to repossess himself, for the purpose of selling it, any of the attached property, which may have passed out of his hands without having been sold or converted into money; and the sheriff shall, under such order, have the same power to take the property, as he would have under an order of attachment.

§ 224. If personal property which has been attached, be claimed by any person other than the defendant, it shall be the duty of the officer to have the validity of such claim tried, and such proceedings must be had thereon, with the like effect, as in case the property had been seized upon execution, and claimed by a third person.

§ 225. Where several attachments are executed on the same property, or the same persons are made garnishees, the court, on the motion of any of the plaintiffs, may order a reference to ascertain and report the amounts and priorities of the several attachments.

If judgment be rendered for defendant, attachment discharged.

If judgment be rendered for plaintiff, money and property to be subjected to its payment.

Court may enforce the delivery of property attached, as for contempt.

May order sheriff to repossess himself of attached property.

When property attached is claimed by a third person, how to proceed.

When question of priority may be referred.

SUBDIVISION VI.

GENERAL PROVISIONS.

§ 226. From the time of the issuing of the order of attachment, the court shall be deemed to have acquired jurisdiction and to have control of all subsequent pro-

Proceedings not to end by the death of the defendant.

ceedings under this chapter ; and if, after the issuing of the order, the defendant being a person, should die, or a corporation, and its charter should expire by limitation, forfeiture, or otherwise, the proceedings shall be carried on ; but in all such cases other than where the defendant was a foreign corporation, his legal representatives shall be made parties to the action.

When plaintiff may be required to give additional security.

§ 227. The defendant may, at any time before judgment after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff ; and if, on such motion, the court is satisfied that the surety in the plaintiff's undertaking has removed from this State, or is not sufficient for the amount thereof, it may vacate the order of attachment and direct restitution of any property taken under it, unless in a reasonable time to be fixed by the court, sufficient security is given by the plaintiff.

Motion to discharge an attachment.

§ 228. The defendant may at any time before judgment, upon reasonable notice to the plaintiff, move to discharge an attachment, as to the whole or a part of the property attached.

What evidence may be used on such motion.

§ 229. If the motion be made upon affidavits on the part of the defendant, or papers and evidence in the case, but not otherwise, the plaintiff may oppose the same by affidavits or other evidence, in addition to that on which the order of attachment was made.

ARTICLE II.

ATTACHMENTS IN CERTAIN ACTIONS.

§ 230. 1. Where a debtor has sold, conveyed, or otherwise disposed of his property, with the fraudulent intent to cheat or defraud his creditors, or to hinder or delay them in the collection of their debts ; or

2. Is about to make such sale, conveyance, or disposition of his property, with such fraudulent intent ; or

3. Is about to remove his property, or a material part thereof, with the intent, or to the effect, of cheating or defrauding his creditors, or of hindering or delaying them in the collection of their debts, a creditor may bring an action on his claim before it is due, and have an attachment against the property of the debtor.

Who to grant same, and the affidavit.

§ 231. The attachment authorized by the last section, may be granted by the court in which the action is brought, or by a judge thereof ; but before such action shall be brought, or such attachment shall be granted, the plaintiff, his agent, or attorney, shall make an oath in writing, showing the nature and amount of the plaintiff's claim, that it is just, when the same

will become due, and the existence of some one of the grounds for attachment, enumerated in the preceding section.

§ 232. If the court or judge refuse to grant an order of attachment, the action shall be dismissed, but without prejudice to a future action; and in all such actions, application for an attachment must be made.

Action to be dismissed, if attachment be refused.

§ 233. The order of the court or judge granting the attachment, shall specify the amount for which it is allowed, not exceeding a sum sufficient to satisfy the plaintiff's claim and the probable costs of the action.

§ 234. The order of attachment, as granted by the court or judge, shall not be issued by the clerk, until there has been executed in his office, such undertaking on the part of the plaintiff, as is directed by section one hundred and ninety-three.

Bond to be executed before order issues.

§ 235. The plaintiff in such action shall not have judgment on his claim, before it becomes due, and the proceedings on attachment may be conducted without delay.

Action to be continued until the claim is due.

§ 236. The proceedings in the first article of this chapter subsequent to section one hundred and ninety-three, shall, so far as they are applicable, regulate the attachments authorized by this article.

Proceedings under this article, how regulated.

CHAPTER IV.

INJUNCTION.

§ 237. The injunction provided by this code, is a command to refrain from a particular act. It may be the final judgment in an action, or may be allowed as a provisional remedy; and when so allowed, it shall be by order. The writ of injunction is abolished.

Injunction, what.

§ 238. When it appears by the petition, that the plaintiff is entitled to the relief demanded; and such relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which, during the litigation, would produce great or irreparable injury to the plaintiff, or when, during the litigation, it appears that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction may be granted to restrain such act. It may also be granted in any case, where it is specially authorized by statute.

Causes for an injunction.

When and by whom an injunction may be granted.

§ 239. The injunction may be granted at the time of commencing the action, or at any time afterwards, before judgment, by the Supreme Court or any judge thereof, the Court of Common Pleas or any judge thereof, or in the absence from the county of said judges, by the Probate Judge thereof, upon its appearing satisfactorily to the court or judge, by the affidavit of the plaintiff or his agent, that the plaintiff is entitled thereto.

Court or judge may direct that notice be given before granting an injunction.

§ 240. If the court or judge deem it proper that the defendant, or any party to the suit, should be heard before granting the injunction, it may direct a reasonable notice to be given to such party to attend for such purpose at a specified time and place, and may, in the meantime, restrain such party.

Notice, when required.

§ 241. An injunction shall not be granted against a party, who has answered, unless upon notice; but such party may be restrained, until the decision of the application for an injunction.

Bond required.

§ 242. No injunction, unless otherwise provided by special statute, shall operate, until the party obtaining the same shall give an undertaking executed by one or more sufficient sureties, to be approved by the clerk of the court granting such injunction, in an amount to be fixed by the court or judge allowing the same, to secure to the party enjoined the damages he may sustain, if it be finally decided that the injunction ought not to have been granted.

To whom writ of injunction addressed, and as to the service thereof.

§ 243. The order of injunction shall be addressed to the party enjoined, shall state the injunction, and shall be issued by the clerk. Where the injunction is allowed at the commencement of the action, the clerk shall endorse upon the summons "injunction allowed," and it shall not be necessary to issue the order of injunction; nor shall it be necessary to issue the same, where notice of the application therefor has been given to the party enjoined. The service of the summons so endorsed, or the notice of the application for an injunction, shall be notice of its allowance.

As to service of injunction.

§ 244. Where the injunction is allowed during the litigation and without notice of the application therefor, the order of injunction shall be issued, and the sheriff forthwith serve the same, upon each party enjoined, in the manner prescribed for serving a summons, and make return thereof without delay.

§ 245. An injunction binds the party, from the time he has notice thereof, and the undertaking required by the applicant therefor, is executed.

When binding.

§ 246. No injunction shall be granted by a judge, after a motion therefor has been overruled on the merits of the application, by his court, and where it has been refused by the court in which the action is brought, or a judge thereof, it

shall not be granted to the same applicant, by a court of inferior jurisdiction or any judge thereof.

§ 247. An injunction granted by a judge may be enforced, as the act of the court. Disobedience of an injunction may be punished, as a contempt, by the court or any judge, who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied by affidavit of the breach of the injunction, against the party guilty of the same; and he may be required, in the discretion of the court or judge, to pay a fine not exceeding two hundred dollars for the use of the county, to make immediate restitution to the party injured and give further security, to obey the injunction; or in default thereof, he may be committed to close custody, until he shall fully comply with such requirement, or be otherwise legally discharged.

Disobedience of an injunction may be punished.

§ 248. A party enjoined may, at any time before judgment, upon reasonable notice to the party, who has obtained the injunction, move the court for additional security; and if it appear that the surety in the undertaking has removed from the State, or is insufficient, the court may vacate the injunction, unless in a reasonable time, sufficient security is given.

Party enjoined may apply for further security.

§ 249. On the hearing of an application for an injunction, each party may read affidavits. All affidavits shall be filed.

On hearing of application, each party may read affidavits.

§ 250. If the injunction be granted without notice, the defendant, at any time before the trial, may apply, upon notice, to the court in which the action is brought or any judge thereof, to vacate or modify the same. The application may be made upon the petition and affidavits upon which the injunction is granted, or upon affidavits on the part of the party enjoined, with or without answer. The order of the judge allowing, dissolving, or modifying an injunction, shall be returned to the office of the clerk of the court in which the action is brought, and recorded and obeyed, as if made by the court.

Motion to vacate or modify injunction.

§ 251. If the application be made upon affidavits on the part of the defendant, but not otherwise, the plaintiff may oppose the same to affidavits or other evidence, in addition to that on which the injunction was granted.

Affidavits on motion.

§ 252. A defendant may obtain an injunction upon an answer in the nature of a counter-claim. He shall proceed in the manner prescribed in this chapter.

A defendant may obtain an injunction.

CHAPTER V.

RECEIVERS AND OTHER PROVISIONAL REMEDIES.

§ 253. A receiver may be appointed by the supreme court, the district court, or by the courts of common pleas

Receivers, when appointed.

or any judge of either ; or in the absence of said judges from the county, by the Probate Judge thereof.

1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured :

2. In an action by a mortgagee for the foreclosure of his mortgage, and sale of the mortgaged property, where it appears that the mortgaged property is in danger of being lost, removed, or materially injured, or that the condition of the mortgage has not been performed, and that the property is probably insufficient to discharge the mortgage debt :

3. After judgment, to carry the judgment into effect :

4. After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied, and the judgment debtor refuses to apply the property in satisfaction of the judgment :

5. In the cases provided in this code and by special statutes, when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights :

6. In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

No party or attorney to be receiver.

Oath and undertaking by receiver.

§ 254. No party, or attorney, or person interested in an action, shall be appointed receiver therein.

§ 255. Before entering upon his duties, the receiver must be sworn to perform them faithfully, and, with one or more sureties approved by the court or judge, execute an undertaking to such person and in such sum as the court or judge shall direct, to the effect that he will faithfully discharge the duties of receiver in the action, and obey the orders of the court therein.

Powers of receiver.

§ 256. The receiver has, under the control of the court, power to bring and defend actions in his own name, as receiver, to take and keep possession of the property, to receive rents, collect debts, to compound for and compromise the same, to make transfers, and generally, to do such acts respecting the property as the court may authorize.

Investment of funds by receiver.

§ 257. Funds in the hands of a receiver may be invested upon interest by order of the court ; but no such order shall be made, except upon the consent of all the parties to the action.

Disposition of property in hands of trustees.

§ 258. When it is admitted by the pleading or examination of a party, that he has in his possession, or under his control, any money or other thing capable of delivery, which, being the subject of the litigation, is held by him as trustee

for another party, or which belongs or is due to another party, the court may order the same to be deposited in court, or delivered to such party, with or without security, subject to the further direction of the court.

§ 259. Whenever, in the exercise of its authority, a court shall have ordered the deposit or delivery of money or other thing, and the order is disobeyed, the court, besides punishing the disobedience, as for a contempt, may make an order, requiring the sheriff to take the money or thing, and deposit or deliver it in conformity with the direction of the court.

Enforcement of orders of court under this chapter.

TITLE IX.

TRIAL.

CHAPTER 1. Issue. 2. Trial.

CHAPTER I.

ISSUE.

§ 260. Issues arise on the pleadings, where a fact, or conclusion of law, is maintained by one party and controverted by the other. They are of two kinds,

Issues are of two kinds; law and fact.

1. Of law:
2. Of fact.

§ 261. An issue of fact arises,

1. Upon a material allegation in the petition denied by the answer :

Upon what issues of fact arise.

2. Upon a set-off or counterclaim presented in the answer, and denied by the reply :

3. Upon material new matter in the answer or reply, which shall be considered as controverted by the opposite party without further pleading.

CHAPTER II.

TRIAL.

- ARTICLE 1. Trial in general :
2. Trial by Jury :
 3. Trial by the Court :
 4. Trial by Referees :
 5. Exceptions :
 6. New Trial :
 7. General Provisions :
 8. Time of Trial.

ARTICLE I.

TRIAL IN GENERAL.

§ 262. A trial is a judicial examination of the issues, whether of law or of fact, in an action.

Trial.

Issue of law
tried by the
court; those of
fact by a jury,
unless waived.

§ 263. Issues of law must be tried by the court, unless referred as provided in section two hundred and eighty-one. Issues of fact arising in actions for the recovery of money, or of specific real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

Other issues by
the court.

§ 264. All other issues of fact shall be tried by the court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

ARTICLE II.

TRIALS BY JURY.

- SUBDIVISION 1. Formation of the Jury.
2. Conduct of the trial.
3. Verdict.

SUBDIVISION I.

FORMATION OF THE JURY.

Mode of impan-
neling jury not
changed

§ 265. The general mode of summoning, impanneling, challenging, and swearing the jury, is not changed by this code.

SUBDIVISION II.

CONDUCT OF THE TRIAL.

Mode of con-
ducting trial.

§ 266. When the jury has been sworn, the trial shall proceed in the following order, unless the court for special reasons otherwise direct:

1. The plaintiff must briefly state his claim, and may briefly state the evidence by which he expects to sustain it.

2. The defendant must then briefly state his defence, and may briefly state the evidence he expects to offer in support of it.

3. The party, who would be defeated if no evidence were given on either side, must first produce his evidence; the adverse party will then produce his evidence.

4. The parties will then be confined to rebutting evidence, unless the court, for good reasons in furtherance of justice, permits them to offer evidence in their original case.

5. When the evidence is concluded, either party may request instructions to the jury on points of law, which shall be given or refused by the court: which instructions shall be reduced to writing, if either party require it.

6. The parties may then submit or argue the case to the jury. In the argument, the party required first to produce his evidence, shall have the opening and conclusion. If several defendants having separate defences, appear by different counsel, the court shall arrange their relative order.

7. The court may again charge the jury after the argument is concluded.

§ 267. Whenever, in the opinion of the court, it is proper for the jury to have a view of property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted in a body under the charge of an officer to the place, which shall be shown to them by some person appointed by the court for that purpose. While the jury are thus absent, no person other than the person so appointed, shall speak to them on any subject connected with the trial.

Jury may have a view of property in litigation, or a place where a material fact occurred.

§ 268. When the case is finally submitted to the jury, they may decide in court or retire for deliberation. If they retire, they must be kept together in some convenient place, under the charge of an officer until they agree upon a verdict or are discharged by the court, subject to the discretion of the court to permit them to separate temporarily at night, and at their meals. The officer having them under his charge, shall not suffer any communication to be made to them, or make any himself, except to ask them if they have agreed upon their verdict, unless by order of the court, and he shall not before their verdict is rendered, communicate to any person the state of their deliberations or the verdict agreed upon.

Duty of jury and court after a case is submitted to them.

§ 269. If the jury are permitted to separate either during the trial, or after the case is submitted to them, they shall be admonished by the court that it is their duty not to converse with, or suffer themselves to be addressed by, any other person, on any subject of the trial, and that it is their duty not to form or express an opinion thereon, until the cause is finally submitted to them.

If jury are permitted to separate, court must admonish them as to their duty.

§ 270. After the jury have retired for deliberation, if there be a disagreement between them as to any part of the testimony, or if they desire to be informed as to any part of the law arising in the case, they may request the officer to conduct them to the court, where the information upon the point of law shall be given, and the court may give its recollection as to the testimony on the point in dispute, in the presence of, or after notice to the parties or their counsel.

If jury disagree as to law or fact, they may be brought into court.

§ 271. The jury may be discharged by the court on account of the sickness of a juror, or other accident or calamity requiring their discharge, or by consent of both parties, or after they have been kept together until it satisfactorily appears that there is no probability of their agreeing.

Causes for which a jury may be discharged.

If jury are discharged, cause may be tried at same or next term.

§ 272. In all cases where the jury are discharged during the trial or after the cause is submitted to them, it may be tried again immediately or at a future time, as the court may direct.

Manner of delivering verdict. Jury may be polled.

§ 273. When the jury have agreed upon their verdict, they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreman. When the verdict is announced, either party may require the jury to be polled, which is done by the clerk or court asking each juror if it is his verdict. If any one answers in the negative, the jury must again be sent out for further deliberation.

Verdict must be in writing, and signed by foreman.

§ 274. The verdict shall be written, signed by the foreman, and read by the clerk to the jury, and the inquiry made whether it is their verdict. If any juror disagrees, the jury must be sent out again; but if no disagreement be expressed, and neither party requires the jury to be polled, the verdict is complete, and the jury discharged from the case. If, however, the verdict be defective in form only, the same may, with the assent of the jury before they are discharged, be corrected by the court.

Court may correct errors in form of verdict.

SUBDIVISION III.

VERDICT.

The verdict may be either general or special.

§ 275. The verdict of a jury is either general or special. A general verdict is that by which they pronounce, generally, upon all or any of the issues, either in favor of the plaintiff or defendant. A special verdict is that by which the jury finds the facts only. It must present the facts as established by the evidence, and not the evidence to prove them; and they must be so presented as that nothing remains to the court, but to draw from them conclusions of law.

Jury have discretion to find a general or special verdict.

§ 276. In every action for the recovery of money only, or specific real property, the jury in their discretion, may render a general or special verdict. In all other cases, the court may direct the jury to find a special verdict in writing upon all or any of the issues; and in all cases may instruct them if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the clerk and entered on the journal.

If special finding is inconsistent with general verdict, the former controls.

§ 277. When the special finding of facts is inconsistent with the general verdict, the former controls the latter, and the court may give judgment accordingly.

The jury must assess the amt of recovery.

§ 278. When by the verdict, either party is entitled to recover money of the adverse party, the jury in their verdict, must assess the amount of recovery.

ARTICLE III.

TRIAL BY THE COURT.

§ 279. The trial by jury may be waived by the parties in actions arising on contract, and with the assent of the court, in other actions, in the following manner :

Trial by jury may be waived and cause submitted to court.

1. By the consent of the party appearing, when the other party fails to appear at the trial by himself or attorney.

2. By written consent in person, or by attorney, filed with the clerk.

3. By oral consent in open court entered on the journal.

§ 280. Upon the trial of questions of fact by the court, it shall not be necessary for the court to state its finding, except, generally, for the plaintiff or defendant, unless one of the parties request it, with the view of excepting to the decision of the court upon the questions of law involved in the trial ; in which case the court shall state in writing the conclusions of fact found, separately from the conclusions of law.

Court need not state facts specially unless exceptions are filed.

ARTICLE IV.

TRIAL BY REFEREES.

§ 281. All or any of the issues in the action, whether of fact or of law, or both, may be referred, upon the written consent of the parties, or upon their oral consent in court entered upon the journal.

All issues referable by consent.

§ 282. Where the parties do not consent, the court may upon the application of either, or of its own motion, direct a reference in either of the following cases :

When reference may be compulsorily ordered

1. Where the trial of an issue of fact shall require the examination of mutual accounts, or where the account is on one side only, and it shall be made to appear to the court, that it is necessary that the party on the other side should be examined as a witness to prove the account ; in which cases, the referees may be directed to hear and report upon the whole issue, or upon any specific question of fact involved therein, or,

2. Where the taking of an account shall be necessary for the information of the court before judgment, in cases which may be determined by the court, or for carrying a judgment into effect, or,

3. Where a question of fact, other than upon the pleadings, shall arise, upon motion or otherwise, in any stage of an action.

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| Mode of trial. | § 283. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found, and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the court. When the reference is to report the facts, the report has the effect of a special verdict. |
| Effect of report. | |
| Referees, how chosen. | § 284. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person, or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception. |
| Probate Judge, or justice of the Peace cannot make a reference. | § 285. A reference as provided in this chapter cannot be ordered by a Probate court, unless by consent of the parties to the reference and referees. |
| Referee shall sign exceptions when taken. | § 286. It shall be the duty of the referees to sign any true exceptions taken to any order or decision by them made in the case, and return the same with their report to the court making the reference. |
| Reference may be made in vacation, by consent of parties. | § 287. A judge in vacation, upon the written consent of the parties, may make any order of reference which the court, of which he is a member, could make in term time. In such case the order of reference shall be made on the written agreement of the parties to refer, and shall be filed with the clerk of the court with the other papers in the case. |
| Oath of referees. | § 288. The referees must be sworn or affirmed well and faithfully to hear and examine the cause and to make a just and true report therein according to the best of their understanding. The oath may be administered by any person authorized to take depositions. |
| Compensation of referees. | § 289. The referees shall be allowed such compensation for their services as the court may deem just and proper, which shall be taxed as a part of the costs in the case. |

ARTICLE V. EXCEPTIONS.

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| Exception. | § 290. An exception is an objection taken to a decision of the court upon a matter of law. |
| An exception must be taken at the time. | § 291. The party objecting to the decision must except at the time the decision is made, and time may be given to reduce the exception to writing, but not beyond the term. |
| No form necessary in stating exceptions. | § 292. No particular form of exception is required. The exception must be stated, with so much of the evidence as |

is necessary to explain it, and no more, and the whole as briefly as possible.

§ 293. Where the decision objected to is entered on the record, and the grounds of objection appear in the entry, the exception may be taken by the party causing to be noted, at the end of the decision, that he excepts.

How exception to be taken when facts appear on record.

§ 294. Where the decision is not entered on the record, or the grounds of objection do not sufficiently appear in the entry, the party excepting must reduce his exception to writing, and present it to the court for its allowance. If true, it shall be the duty of a majority of the judges composing the court, to allow and sign it, whereupon it shall be filed with the pleadings as part of the record, but not spread at large on the journal. If the writing is not true, the court shall correct it, or suggest the correction to be made, and it shall then be signed as aforesaid.

How exceptions settled where they do not appear on record.

§ 295. No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

Exception must be material, and prejudicial to rights of party.

§ 296. Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

Party taking exceptions may on leave of court withdraw them.

ARTICLE VI.

NEW TRIAL.

§ 297. A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report, or decision shall be vacated and a new trial granted, on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party:

For what causes a new trial may be granted.

1. Irregularity in the proceedings of the court, jury, referee, or prevailing party, or any order of the court or referee, or abuse of discretion, by which the party was prevented from having a fair trial:

2. Misconduct of the jury or prevailing party.

3. Accident or surprise, which ordinary prudence could not have guarded against:

4. Excessive damages, appearing to have been given under the influence of passion or prejudice:

5. Error in the assessment of the amount of recovery, whether too large, or too small, where the action is upon a contract, or for the injury or detention of property:

6. That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law:

7. Newly discovered evidence material for the party applying, which he could not, with reasonable diligence have discovered and produced at the trial:

8. Error of law occurring at the trial, and excepted to by the party making the application.

For what causes a new trial may not be granted.

§ 298. A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor in any other action where the damages shall equal the actual pecuniary injury sustained.

Application for new trial must be made at the same term judgment is rendered.

§ 299. The application for a new trial must be made at the term the verdict, report, or decision is rendered, and except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Grounds must be in writing, and sustained by affidavits.

§ 300. The application must be by motion upon written grounds, filed at the time of making the motion. The causes enumerated in subdivision two, three and seven of section two hundred and ninety-seven must be sustained by affidavits showing their truth, and may be controverted by affidavits.

Application for new trial may be made after expiration of term, but by action. Proceedings thereon.

§ 301. Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases not later than the second term after the discovery; on which a summons shall issue, be returnable and served, or publication made as prescribed in section seventy-two. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term, and if in term, it shall be heard and decided after the expiration of twenty days from such service. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

ARTICLE VII.

GENERAL PROVISIONS.

Plaintiff may recover damages to which he is entitled.

§ 302. Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

§ 303. The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable to trials by the court.

Provisions concerning jury trials applicable to trials by court.

ARTICLE VIII.

TIME OF TRIAL.

§ 304. The clerk of the court of common pleas shall keep at least five books, to be called the appearance docket, the trial docket, the journal, the record and execution docket.

Dockets to be kept by clerk, appearance, trial, journal, record and execution. Appearance docket.

§ 305. On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer and his return thereon, the time of filing the petition, and all subsequent pleadings.

§ 306. The trial docket shall be made out by the clerk of the court at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up, when either party is in default of a pleading.

Trial docket—how causes set for trial.

§ 307. The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless by consent of the parties, or the order of the court, they are continued or placed at the heel of the docket. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion, and may by rule prescribe the time for hearing motions.

Cases not to be tried before the day set, except &c.

§ 308. Actions shall be triable at the first term of the court, after the issues therein, by the times fixed for pleading, are or should have been made up; and when, by the times fixed for pleading, the issues are, or should have been made up during a term, such actions shall be triable at that term. When the issues are, or should have been made up, either before, or during a term of court, but after the period for preparing the trial docket of such term, the clerk, if required by the court, shall place such actions on the trial docket of that term.

Same subject.

§ 309. The clerk shall make out a copy of the trial docket for the use of the bar before the first day of the term of court.

Copy of trial docket for use of bar.

TITLE X.

EVIDENCE.

- CHAPTER 1. Competency of witnesses.
 2. Means of producing witnesses.
 3. Mode of taking their testimony.
 4. Admission, inspection, and production of documents and general provisions.
 5. Perpetuation of testimony.

CHAPTER I.

COMPETENCY OF WITNESSES.

Parties, or persons interested or convicted of crime, not disqualified as witnesses.

§ 310. No person shall be disqualified as a witness, in any civil action or proceeding, by reason of his interest in the event of the same, as a party or otherwise, or by reason of his conviction of a crime; but such interest or conviction may be shown for the purpose of affecting his credibility.

Exceptions to the rule of the preceding section.

§ 311. Nothing in the preceding section contained, shall in any manner affect the laws, now existing, relating to the settlement of estates of deceased persons, infants, idiots, or lunatics, or the attestation of the execution of last wills and testaments; or of conveyances of real estate, or of any other instrument required by law to be attested.

Adverse parties in civil actions may be compelled to testify.

§ 312. Any party to a civil action or proceeding may compel any adverse party, or person for whose benefit such action or proceeding is instituted, prosecuted or defended, at the trial or by deposition, to testify as a witness in the same manner, and subject to the same rules as other witnesses.

Same subject.

§ 313. No party shall be allowed to testify by virtue of the provisions of section three hundred and ten, where the adverse party is the executor, or administrator, of a deceased person, when the facts to be proved, transpired before the death of such deceased person; nor shall he testify, unless he give reasonable notice of his intention so to do, to the adverse party, his agent, or attorney.

Who are incompetent to testify.

§ 314. The following persons shall be incompetent to testify:

1. Persons who are of unsound mind at the time of their production for examination:

2. Children under ten years of age who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them truly:

3. Husband and wife, for or against each other, or concerning any communication made by one to the other during the marriage, whether called as a witness while that relation subsisted or afterwards:

4. An attorney, concerning any communication made to him by his client in that relation, or his advice thereon, without the client's consent.

5. A clergyman or priest, concerning any confession made to him in his professional character, in the course of discipline, enjoined by the church to which he belongs, without the consent of the person making the confession.

§ 315. If a person offer himself as a witness, that is to be deemed a consent to the examination also of an attorney, clergyman or priest, on the same subject, within the meaning of the last two subdivisions of the preceding section.

Incompetency
may be removed by consent,
¶c.

CHAPTER II.

MEANS OF PRODUCING WITNESSES.

§ 316. The clerks of the several courts and judges of the Probate courts shall, on application of any person having a cause or any matter pending in court, issue a subpoena for witnesses under the seal of the court, inserting all the names required by the applicant in one subpoena, which may be served by the sheriff, coroner, or any constable of the county, or by the party or any other person. When a subpoena is not served by the sheriff, coroner or constable, proof of service shall be shown by affidavit; but no costs of serving the same shall be allowed, except when served by an officer.

How the attendance of witnesses is procured.

§ 317. The subpoena shall be directed to the person therein named, requiring him to attend at a particular time and place, to testify as a witness, and it may contain a clause directing the witness to bring with him any book, writing, or other thing under his control which he is bound by law to produce as evidence.

The Subpoena.

§ 318. When the attendance of the witness before any officer authorized to take depositions is required, the subpoena shall be issued by such officer.

Officer authorized to take depositions may issue subpoena.

§ 319. The subpoena shall be served either by reading, or by copy, delivered to the witness, or left at his usual place of residence; but such copy need not contain the name of any other witness.

How subpoena served.

§ 320. A witness shall not be obliged to attend for examination on the trial of a civil action, except in the county of his residence, nor to attend to give his deposition out of the county where he resides, or where he may be when the subpoena is served upon him.

Witness not compelled to attend beyond the county of his residence.

§ 321. A witness may demand his traveling fees, and fee for one day's attendance, when the subpoena is served upon him, and if the same be not paid, the witness shall not be

Witness fees.

obliged to obey the subpoena. The fact of such demand and non-payment shall be stated in the return.

Contempt of
court by a wit-
ness.

§ 322. Disobedience of a subpoena, or a refusal to be sworn or to answer as a witness, or to subscribe a deposition, when lawfully ordered, may be punished as a contempt of the court or officer, by whom his attendance or testimony is required.

Warrant may
issue against a
witness, &c.

§ 323. When a witness fails to attend in obedience to a subpoena (except in case of a demand and failure to pay his fees,) the court or officer before whom his attendance is required, may issue an attachment to the sheriff, coroner or constable of the county, commanding him to arrest and bring the person therein named, before the court or officer, at a time and place to be fixed in the attachment, to give his testimony and answer for the contempt. If the attachment be not for immediately bringing the witness before the court or officer, a sum may be fixed in which the witness may give an undertaking with surety for his appearance. Such sum shall be endorsed on the back of the attachment; and if no sum is so fixed and endorsed, it shall be one hundred dollars. If the witness be not personally served, the court may, by a rule, order him to show cause why an attachment should not issue against him.

Witness may be
fined and im-
prisoned for
contempt.

§ 324. The punishment for the contempt mentioned in section three hundred and twenty-two shall be as follows: When the witness fails to attend in obedience to the subpoena (except in case of a demand and failure to pay his fees) the court or officer may fine the witness in a sum not exceeding fifty dollars. In other cases, the court or officer may fine the witness in a sum not exceeding fifty nor less than five dollars, or may imprison him in the county jail, there to remain until he shall submit to be sworn, testify, or give his deposition. The fine imposed by the court shall be paid into the county treasury, and that imposed by the officer, shall be for the use of the party for whom the witness was subpoenaed. The witness shall, also, be liable to the party injured, for any damages occasioned by his failure to attend, or his refusal to be sworn, testify, or give his deposition.

Witness im-
prisoned may be
released by the
county judge.

§ 325. A witness so imprisoned by an officer before whom his deposition is being taken, may apply to a judge of the supreme court, court of common pleas, or probate court, who shall have power to discharge him, if it appear that his imprisonment is illegal.

Proceedings on
the arrest of a
witness.

§ 326. Every attachment for the arrest, or order of commitment to prison of a witness, by a court or officer, pursuant to this chapter, must be under the seal of the court or officer, if he have an official seal, and must specify particularly the cause of the arrest or commitment; and if the commitment be for refusing to answer a question, such question must be stated in the order. Such order of commitment

may be directed to the sheriff, coroner, or any constable of the county where such witness resides, or may be at the time, and shall be executed by committing him to the jail of such county and delivering a copy of the order to the jailor.

§ 327. A person confined in any prison in this State, may, by order of any court of record, be required to be produced for oral examination in the county where he is imprisoned; but in all other cases his examination must be by deposition.

Person confined in prison may be produced for examination.

§ 328. While a prisoner's deposition is being taken, he shall remain in the custody of the officer having him in charge, who shall afford reasonable facilities for the taking of the deposition.

Prisoner must be under control of officer during examination.

§ 329. A witness shall not be liable to be sued in a county in which he does not reside, by being served with a summons in such county, while going, returning, or attending in obedience to a subpoena.

Witness not to be sued while obeying a subpoena.

§ 330. At the commencement of each day after the first day, a witness may demand his fees for that day's attendance in obedience to a subpoena, and if the same be not paid, he shall not be required to remain.

Witness may demand fees for each day's attendance.

§ 331. Before testifying, the witness shall be sworn to testify the truth, the whole truth and nothing but the truth. The mode of administering an oath, shall be such as is most binding upon the conscience of the witness.

The oath.

CHAPTER III.

MODE OF TAKING THE TESTIMONY OF WITNESSES.

- ARTICLE 1. Affidavit.
2. Deposition.

§ 332. The testimony of witnesses is taken in three modes:

The several modes of taking testimony.

1. By affidavit:
2. By deposition:
3. By oral examination.

§ 333. An affidavit is a written declaration under oath, made without notice to the adverse party.

Affidavit.

§ 334. A deposition is a written declaration under oath, made upon notice to the adverse party for the purpose of enabling him to attend and cross-examine; or, upon written interrogatories.

Deposition.

§ 335. An oral examination is an examination in the presence of the jury or tribunal which is to decide the fact or act upon it, the testimony being heard by the jury or tribunal from the lips of the witness.

Oral examination.

ARTICLE I.

AFFIDAVIT.

For what purposes an affidavit may be read.

§ 336. An affidavit may be used to verify a pleading, to prove the service of a summons, notice, or other process in an action, to obtain a provisional remedy, an examination of a witness, a stay of proceedings or upon a motion, and in any other case permitted by law.

Before whom an affidavit may be made.

§ 337. An affidavit may be made in and out of this State before any person authorized to take depositions, and must be authenticated in the same way, except as provided in section one hundred and eleven.

ARTICLE II.

DEPOSITIONS.

- SUBDIVISION 1. When to be used.
2. Officers who may take them.
 3. Manner of taking and authenticating them.
 4. Exceptions to depositions.

SUBDIVISION I.

WHEN TO BE USED.

When depositions may be used

§ 338. The deposition of any witness may be used only in the following cases :

1. When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial, by change of venue ; or is absent therefrom :

2. When, from age, infirmity, or imprisonment, the witness is unable to attend court, or is dead :

3. When the testimony is required upon a motion, or in any other case where the oral examination of the witness is not required.

When they may be taken.

§ 339. Either party may commence taking testimony by depositions, at any time after service upon the defendant.

SUBDIVISION II.

OFFICERS WHO MAY TAKE THEM.

Officers authorized to take depositions.

§ 340. Depositions may be taken in this State before a judge or clerk of the supreme court, the court of common pleas, or probate court, before a justice of the peace, notary public, mayor, or chief magistrate of any city, or town cor-

porate, or before a master commissioner, or any person empowered by a special commission; but depositions taken in this State, to be used therein, must be taken by an officer or person whose authority is derived within the State.

§ 341. Depositions may be taken out of this State by a judge, justice, or chancellor of any court of record, a justice of the peace, notary public, mayor, or chief magistrate of any city, or town corporate, a commissioner appointed by the Governor of this State to take depositions, or any person authorized by a special commission from this State.

Same subject

§ 342. The officer before whom depositions are taken, must not be a relative or attorney of either party, or otherwise interested in the event of the action or proceeding.

Officer not to be a relative or attorney of either party, &c.

§ 343. Any court of record of this State, or any judge thereof, is authorized to grant a commission to take depositions within or without the State. The commission must be issued to a person or persons therein named, by the clerk, under the seal of the court granting the same, and depositions under it, must be taken upon written interrogatories, unless the parties otherwise agree.

Commission to take depositions.

SUBDIVISION III.

MANNER OF TAKING AND AUTHENTICATING THEM.

§ 344. Prior to the taking of any deposition, unless taken under a special commission, a written notice specifying the action or proceeding, the name of the court or tribunal in which it is to be used, and the time and place of taking the same, shall be served upon the adverse party, his agent or attorney of record, or left at his usual place of abode. The notice shall be served, so as to allow the adverse party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service, and the examination may, if so stated in the notice, be adjourned from day to day.

Requisites of notice to take depositions.

§ 345. When the party against whom the deposition is to be read, is absent from, or a non-resident of the State, and has no agent, or attorney of record therein, he may be notified of the taking of the deposition by publication. The publication must be made three consecutive weeks, in some newspaper printed in the county where the action or proceeding is pending, if there be any printed in such county; and if not, in some newspaper printed in this State, of general circulation in that county. The publication must contain all that is required in a written notice, and may be proved in the manner prescribed in section seventy-three.

Notice, if adverse party be absent or non-resident.

Deposition to be written by officer or witness.

Sealed and forwarded to clerk &c.

Before what tribunals depositions may be used.

When depositions may be used.

Certificate and signature of officer a sufficient authentication.

Certificate of the officer must show how and when deposition was taken.

§ 346. The deposition shall be written in the presence of the officer taking the same, either by the officer, the witness, or some disinterested person, and subscribed by the witness.

§ 347. The deposition so taken shall be sealed up and endorsed with the title of the cause and the name of the officer taking the same, and by him addressed and transmitted to the clerk of the court where the action or proceeding is pending. It shall remain under seal until opened by the clerk by order of the court, or at the request of a party to the action or proceeding, or his attorney.

§ 348. Depositions taken pursuant to this article, shall be admitted in evidence on the trial of any civil action or proceeding pending before any justice of the peace, mayor, or other judicial officer of a city, or town corporate, or before any arbitrators or referees, and such depositions shall be sealed up, endorsed with the title of the action or proceeding, the name of the officer taking the same, and addressed and transmitted by such officer to such justice, mayor, or other judicial officer, arbitrator, or referees.

§ 349. When a deposition has been once taken, it may be read in any stage of the same action or proceeding, or in any other action or proceeding upon the same matter between the same parties, subject however to all such exceptions as may be taken thereto under the provisions of this title.

§ 350. Depositions taken pursuant to this article, by any judicial or other officer herein authorized to take depositions, having a seal of office, whether resident in this State or elsewhere, shall be admitted in evidence upon the certificate and signature of such officer, under the seal of the court of which he is an officer, or his official seal, and no other or further act of authentication shall be required. If the officer taking the same have no official seal, the deposition, if not taken in this State, shall be certified and signed by such officer, and shall be further authenticated, either by parol proof adduced in court, or by the official certificate and seal of any secretary or other officer of State keeping the great seal thereof, or of the clerk or prothonotary of any court having a seal, attesting that such judicial or other officer was at the time of taking the same within the meaning of this chapter authorized to take the same. But if the deposition be taken within this State by an officer having no seal, or within or without this State under a special commission, it shall be sufficiently authenticated by the official signature of the officer or commissioner taking the same.

§ 351. The officer taking the deposition shall annex thereto a certificate showing the following facts :

That the witness was first sworn to testify the truth, the whole truth and nothing but the truth :

That the deposition was reduced to writing by some proper person (naming him):

That the deposition was written and subscribed in the presence of the officer certifying thereto:

That the deposition was taken at the time and place specified in the notice.

§ 352. When a deposition is offered to be read in evidence, it must appear to the satisfaction of the court, that for any cause specified in section three hundred and thirty-eight, the attendance of the witness cannot be procured.

§ 353. Every deposition intended to be read in evidence on the trial, must be filed at least one day before the day of trial.

§ 354. The following fees shall be allowed for taking depositions in this State, viz: Swearing each witness, four cents; for each subpoena, attachment, or order of commitment, fifty cents; for each hundred words contained in such deposition and certificate, ten cents and no more; and such officer may retain the same until such fees are paid. Such officer shall also tax the costs of the sheriff or other officer who shall serve the process aforesaid, and fees of the witnesses, and may also, if directed by the persons entitled thereto, retain such depositions until the said fees are paid.

Fees for taking depositions.

SUBDIVISION IV.

EXCEPTIONS TO DEPOSITIONS.

§ 355. Exceptions to depositions shall be in writing, specifying the grounds of objection, and filed with the papers in the cause.

Exceptions to be in writing.

§ 356. No exception other than for incompetency or irrelevancy shall be regarded, unless made and filed before the commencement of the trial.

To be disregarded unless made and filed before trial.

§ 357. The court shall on motion of either party, hear and decide the questions arising on exceptions to depositions, before the commencement of the trial.

Exceptions to be considered before trial.

§ 358. Errors of the court in its decisions upon exceptions to depositions are waived unless excepted to.

When objections waived.

CHAPTER IV.

ADMISSION, INSPECTION AND PRODUCTION OF DOCUMENTS, AND GENERAL PROVISIONS.

§ 359. Either party may exhibit to the other or to his attorney, at any time before the trial, any paper or document material to the action, and request an admission in writing of its genuineness. If the adverse party or his attorney fail to

A party may be required to admit a paper to be genuine or pay expense of proving it.

give the admission in writing, within four days after the request, and if the party exhibiting the paper or document be afterwards put to any cost or expense to prove its genuineness, and the same be finally proved or admitted on the trial, such costs and expenses, to be ascertained at the trial, shall be paid by the party refusing to make the admission, unless it shall appear to the satisfaction of the court that there were good reasons for the refusal.

Inspection and copy of books, papers and documents how obtained.

§ 360. Either party or his attorney may demand of the adverse party an inspection and copy, or permission to take a copy of a book, paper or document, in his possession or under his control, containing evidence relating to the merits of the action or defence therein. Such demand shall be in writing, specifying the book, paper or document, with sufficient particularity to enable the other party to distinguish it, and if compliance with the demand within four days, be refused, the court or judge, on motion and notice to the adverse party, may in their discretion order the adverse party to give the other, within a specified time, an inspection and copy or permission to take a copy of such book, paper or document; and on failure to comply with such order, the court may exclude the paper or document from being given in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party by affidavit alleges it to be. This section is not to be construed to prevent a party from compelling another to produce any book, paper or document when he is examined as a witness.

How copies of deeds or other written instruments obtained.

§ 361. Either party or his attorney, if required, shall deliver to the other party or his attorney a copy of any deed, instrument or other writing, whereon the action or defence is founded, or which he intends to offer in evidence at the trial. If the plaintiff or defendant shall refuse to furnish the copy or copies required, the party so refusing shall not be permitted to give in evidence at the trial the original, of which a copy has been refused. This section shall not apply to any paper, a copy of which is filed with a pleading as provided in section one hundred and seventeen.

Laws of other States and governments, how proved.

§ 362. Printed copies in volumes of statutes, code, or other written law, enacted by any other State or territory, or foreign government, purporting or proved to have been published by the authority thereof, or proved to be commonly admitted as evidence of the existing law in the courts or tribunals of such State, territory or government, shall be admitted by the courts and officers of this State, on all occasions, as presumptive evidence of such laws. The unwritten or common law of any other State, territory or foreign government, may be proved as facts by parol evidence; and the books of reports of cases adjudged in their courts, may also be admitted as presumptive evidence of such law.

CHAPTER V.

PROCEEDINGS TO PERPETUATE TESTIMONY.

§ 363. The testimony of a witness may be perpetuated in the following manner.

Evidence may be perpetuated.

§ 364. The applicant shall file in the office of the clerk of the court of common pleas a petition, to be verified, in which shall be set forth, specially, the subject matter, relative to which testimony is to be taken, and the names of the persons interested, if known to the applicant; and if not known, such general description as he can give, of such persons, as heirs, devisees, alienees, or otherwise. The petition shall also state the names of the witnesses to be examined and the interrogatories to be propounded to each; that the applicant expects to be a party to an action in a court of this State, in which such testimony will, as he believes, be material, and the obstacles preventing the immediate commencement of the action, where the applicant expects to be the plaintiff.

Petition to be filed; its requisites.

§ 365. The court, or a judge thereof, may forthwith make an order allowing the examination of such witnesses. The order shall prescribe the time and place of the examination, how long the parties interested shall be notified thereof, and the manner in which they shall be notified.

Order for examination; what it must contain.

§ 366. When it appears satisfactorily to the court or judge, that the parties interested, cannot be personally notified, such court or judge shall appoint a competent attorney to examine the petition and prepare and file cross interrogatories to those contained therein. The witnesses shall be examined upon the interrogatories of the applicant, and upon cross interrogatories, where they are required to be prepared, and no others shall be propounded to them; nor shall any statement be received, which is not responsive to some one of them. The attorney filing the cross-interrogatories shall be allowed a reasonable fee therefor, to be taxed in the bill of costs.

When cross interrogatories must be filed.

§ 367. Such depositions shall be taken before some one authorized by law to take depositions, or before some one specially authorized by the court or judge, and shall be returned to the clerk's office of the court, in which the petition was filed.

Depositions; where to be filed.

§ 368. The court or judge, if satisfied that the depositions have been properly taken, and as herein required, shall approve the same and order them to be filed; and if a trial be had between the parties named in the petition, or their privies or successors in interest, such depositions, or certified copies thereof, may be given in evidence by either party, where the witnesses are dead, or insane, or where their at-

To be approved, and effect of the same.

tendance for oral examination cannot be obtained or required : but such depositions shall be subject to the same objections for irrelevancy and incompetency as may be made to depositions taken pending an action.

Applicant to
pay costs.

§ 369. The applicant shall pay the costs of all proceedings under this chapter.

TITLE XI.

JUDGMENT.

- CHAPTER 1. Judgment in general.
2. Judgment upon failure to answer.
3. Judgment by confession.
4. Manner of giving and entering judgment.
5. Conveyance by commissioners.

CHAPTER I.

JUDGMENT IN GENERAL.

Judgment.

§ 370. A judgment is the final determination of the rights of the parties in an action.

Judgment may
be for or against
either of the
parties.

§ 371. Judgment may be given, for or against one or more of several plaintiffs, and for or against one or more of several defendants ; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant, or defendants served.

An action may
be dismissed
without preju-
dice to a future
action. Cases
when, &c.

§ 372. An action may be dismissed without prejudice to a future action,

1. By the plaintiff before the final submission of the case to the jury, or to the court, where the trial is by the court :

2. By the court, where the plaintiff fails to appear on the trial :

3. By the court for the want of necessary parties :

4. By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence :

5. By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action.

In all other cases, upon the trial of the action, the decision must be upon the merits.

§ 373. In any case where a set-off or counterclaim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed his action, or failed to appear.

Defendant may proceed with counterclaim or set off although plaintiff has dismissed his action.

§ 374. In the foreclosure of a mortgage, a sale of the mortgaged property shall in all cases be ordered.

There must be a sale of mortgaged property.

§ 375. When a judgment shall be rendered for a conveyance, release, or acquittance, in any court of this State, and the party against whom the judgment shall be rendered, does not comply therewith by the time appointed, such judgment shall have the same operation and effect, and be as available, as if the conveyance, release, or acquittance had been executed conformably to such judgment. This section shall apply to decrees rendered or to be rendered in suits now pending.

Judgment for conveyance, release or acquittance, to operate as such, if not complied with.

CHAPTER II.

JUDGMENT UPON FAILURE TO ANSWER.

§ 376. If the taking of an account, or the proof of a fact, or the assessment of damages be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may with the assent of the party not in default, take the account, hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee or master commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

Damages may be assessed by court or jury on judgment for failing to answer.

CHAPTER III.

JUDGMENT BY CONFESSION.

§ 377. Any person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment therefor; whereupon judgment shall be entered accordingly.

Defendant may appear and confess judgment.

Debt or cause of action to be briefly stated.

§ 378. The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

Such judgment is a release of errors and may be enforced.

§ 379. Such judgment shall authorize the same proceedings for its enforcement, as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors.

On confession of judgment by attorney, his warrant shall be produced and filed.

§ 380. Every attorney, who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original, or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

The warrant to confess judgment of a person in custody must be attested and signed by the attorney of his own selection.

§ 381. If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody, be present and sign the warrant of attorney, as a witness.

CHAPTER IV.

MANNER OF GIVING AND ENTERING JUDGMENT.

Judgment to be entered in conformity to verdict.

§ 382. When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

If verdict be special or case be reserved, court to order what judgment to be given.

§ 383. Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

If pleading authorize judgment it shall be given.

§ 384. Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

May be given for defendant in cases of counterclaim, set-off, &c.

§ 385. If a counterclaim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

Time for infant to appear and show cause against judgment need not be entered.

§ 386. It shall not be necessary to reserve in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

§ 387. All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action.

The judgment to be entered on journal specifying the relief granted.

§ 388. The clerk shall make a complete record of every cause, as soon as it is finally determined; unless such record or some part thereof be duly waived.

Record of cases.

§ 389. He shall make up such record in each cause, in the vacation next after the term at which the same was determined; and the presiding judge of such court shall, at its next term thereafter, subscribe the same.

When to be made up, and how signed.

§ 390. The records shall be made up from the petition, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court: but if the items of an account or the copies of paper attached to the pleadings be voluminous, the court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded.

Of what record to consist.

But may be abbreviated by order of court, and not to include evidence.

§ 391. When the judicial acts or other proceedings of any court have not been regularly brought up and recorded by the clerk thereof, such court shall cause the same to be made up and recorded within such time as it may direct. When they are made up, and upon examination found to be correct, the presiding judge of such court shall subscribe the same.

Further time to complete record may be granted.

§ 392. Section three hundred and eighty-eight shall not apply—

Cases in which record need not be made.

1. In criminal prosecutions where the indictment has been quashed, or where the prosecuting attorney shall have entered a *nolle prosequi*, on the indictment:

2. In cases where an action has been dismissed without prejudice to a future action, as provided in section three hundred and seventy-two:

3. In all actions in which, in open court, at the term at which the final order or judgment shall be made, both parties shall declare their agreement, that no record shall be made.

§ 393. In cases where an action has been dismissed without prejudice to a future action, the clerk shall make a complete record of the proceedings, upon being paid for making the same by the party desiring the record to be made.

But if action is dismissed without prejudice, record may be made on payment therefor.

§ 394. A complete record shall be made in the case mentioned in section three hundred and seventy-three, unless waived by the parties.

CHAPTER V.

CONVEYANCE BY COMMISSIONERS.

Conveyance of
real property by
Master Com-
missioner.

§ 395. Real property may be conveyed by Master Commissioners as hereinafter provided :

1. When by an order or judgment in an action or proceeding, a party is ordered to convey such property to another, and he shall neglect or refuse to comply with such order or judgment :

When sheriff
may act as mas-
ter commissioner
How sales
to be made.

2. When specific real property is required to be sold under an order or judgment of the court.

§ 396. A sheriff may act as a master commissioner under the second subdivision of the preceding section. Sales made under the same, shall conform in all respects to the laws regulating sales of lands upon execution.

Requisites of a
master's deed.

§ 397. The deed of a master commissioner shall contain the like recital, and shall be executed, acknowledged and recorded, as the deed of a sheriff, of real property sold under execution.

TITLE XII.

CAUSES OF ACTION WHICH SURVIVE, AND
ABATEMENT OF ACTIONS.

What causes of
action survive.

§ 398. In addition to the causes of action which survive at common law, causes of action for mesne profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

What actions
shall not cease.

§ 399. No action pending in any court, shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office, which shall abate by the death of the defendant.

TITLE XIII.

REVIVOR.

CHAPTER 1. Revivor of Actions.

2. Revivor and new parties to judgment.

CHAPTER I.

REVIVOR OF ACTIONS.

§ 400. Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed; the death of the party, or the cessation of his powers, being stated on the record.

When one of parties dies, &c., action may proceed in names of survivors.

§ 401. Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of survivorship, and the court is of opinion, that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

Court may continue proceedings where cause of action does not survive, if the case allows.

§ 402. When one of the parties to an action dies, or his powers as a personal representative cease before the judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

Action may be revived in certain cases.

§ 403. The revivor shall be by a conditional order of the court, if made in term, or by a judge thereof, if in vacation, that the action be revived in the names of the representatives, or successor of the party who died, or whose powers ceased, and proceed in favor of, or against them.

Mode of reviving an action.

§ 404. The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death, or the cessation of his powers, which, with the names and capacities of his representatives, or successor, shall be stated in the order.

By whom motion to revive may be made.

§ 405. If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time, as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

If not made by consent, copy of order of revivor must be served.

§ 406. When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them in whose name the action may be ordered to be revived, are non-resi-

When such service may be constructive.

dents of the State, or have left the same to avoid the service of the order, or so concealed themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published for six consecutive weeks, as provided by section seventy-two, notifying them to appear on a day therein named, not less than ten days after the publication is complete, and show cause why the action should not be revived against them; and if sufficient cause be not shown to the contrary, the action shall stand revived.

When plaintiff dies, in whose name action to be revived.

§ 407. Upon the death of the plaintiff in an action, it may be revived in the names of his representatives, to whom his right has passed. Where his right has passed to his personal representative, the revivor shall be in his name; where it has passed to his heirs or devisees who could support the action if brought anew, the revivor may be in their names.

When defendant dies, how, and in whose name action to be revived.

§ 408. Upon the death of a defendant in an action, wherein the right, or any part thereof, survives against his personal representative, the revivor shall be against him; and it may also be against the heirs, or devisees of the defendant, or both, when the right of action, or any part thereof, survives against them.

When defendant in real action dies, against whom action to be revived.

§ 409. Upon the death of a defendant in an action for the recovery of real property only, or which concerns only his rights or claims to such property, the action may be revived against his heirs, or devisees, or both, and an order therefor may be forthwith made, in the manner directed in the preceding sections of this title.

One year must elapse before order of revivor can be made against representatives of defendant.

§ 410. An order to revive an action against the representatives, or successor of a defendant, shall not be made, without the consent of such representatives, or successor, unless in one year from the time it could have been first made.

Order to revive action in favor of representatives of plaintiff may be made forthwith.

§ 511. An order to revive an action in the names of the representatives, or successor of a plaintiff, may be made forthwith, but shall not be made without the consent of the defendant after the expiration of one year from the time the order might have been first made; but where the defendant shall also have died, or his powers have ceased in the meantime, the order of revivor on both sides may be made in the period limited in the last section.

If the time has passed for reviving an action, it may be stricken from the docket.

§ 412. When it appears to the court by affidavit, that either party to an action has been dead, or where a party sues, or is sued as a personal representative, that his powers have ceased for a period so long, that the action cannot be revived in the names of his representatives, or successor, without the consent of both parties, it shall order the action to be stricken from the docket.

§ 413. At any term of the court succeeding the death of the plaintiff, while the action remains on the docket, the defendant having given to the plaintiff's proper representatives, in whose names the action might be revived, ten days notice of the application therefor, may have an order to strike the action from the docket, and for costs against the estate of the plaintiff, unless the action is forthwith revived.

Defendant may have case stricken from docket, if plaintiff fails to revive.

§ 414. When, by the provisions of the preceding sections, an action stands revived, the trial thereof shall not be postponed by reason of the revivor, if the action would have stood for trial at the term the revivor is complete, had no death, or cessation of powers taken place.

Action stands for trial at term it is revived.

CHAPTER II.

REVIVOR AND NEW PARTIES TO JUDGMENT.

§ 415. When a judgment is recovered against one or more persons jointly indebted upon contract, those who were not originally summoned, may be made parties to the judgment by action.

Joint debtors, not originally summoned, may be made parties to judgment.

§ 416. If either or both the parties die after judgment, and before satisfaction thereof, their representatives, real, or personal, or both, as the case may require, may be made parties to the same, in the same manner as is prescribed for reviving actions before judgment; and such judgment may be rendered, and execution awarded, as might or ought to be given or awarded against the representatives, real, or personal, or both, of such deceased party.

If plaintiff or defendant die after judgment, revivor against their representatives, as the case shall require.

§ 417. If a judgment become dormant, it may be revived in the same manner, as is prescribed for reviving actions before judgment.

Revivor of dormant judgment.

TITLE XIV.

EXECUTIONS.

- CHAPTER 1. Executions against the property of the judgment debtor.
2. Proceedings in aid of Execution.
 3. Executions against the person.
 4. Executions for the delivery of real property.
 5. Judgment before Justices of the Peace.

§ 418. Executions shall be deemed process of the court and shall be issued by the clerk, and directed to the sheriff of the county. They may be directed to different counties at the same time.

Execution, how issued.

Different kinds
of execution.

- § 419. Executions are of three kinds :
1. Against the property of the judgment debtor :
 2. Against his person :
 3. For the delivery of the possession of real property, with damages for withholding the same and costs.

CHAPTER I.

EXECUTIONS AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR.

Property sub-
ject to levy and
sale, as herein-
after provided.

§ 420. Lands, tenements, goods, and chattels, not exempt by law, shall be subject to the payment of debts, and shall be liable to be taken on execution and sold as hereinafter provided.

When lien of
judgment at-
taches to lands
or goods.

§ 421. The lands and tenements of the debtor within the county where the judgment is entered, shall be bound for the satisfaction thereof, from the first day of the term, at which judgment is rendered ; but judgments by confession, and judgments rendered at the same term at which the action is commenced, shall bind such lands only from the day on which such judgments are rendered. All other lands, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution.

When judgment
becomes dor-
mant and cea-
ses to be a lien.

§ 422. If execution shall not be sued out within five years from the date of any judgment, that now is or may hereafter be rendered in any court of record in this State, or if five years shall have intervened between the date of the last execution issued on such judgment and the time of suing out another writ of execution thereon, such judgment shall become dormant, and shall cease to operate as a lien on the estate of the judgment debtor.

Execution
against the pro-
perty of the
judgment debt-
or—its com-
mand and en-
dorsement.

§ 423. The writ of execution against the property of the judgment debtor, issuing from any court of record in this State, shall command the officer to whom it is directed, that of the goods and chattels of the debtor, he cause to be made the money specified in the writ ; and for want of goods and chattels, he cause the same to be made of the lands and tenements of the debtor ; and the exact amount of the debt, damages and costs, for which the judgment is entered, shall be endorsed on the execution.

In what cases
no preference
shall be given
to executions—

§ 424. When two or more writs of execution against the same debtor, shall be sued out during the term in which judgment was rendered, or within ten days thereafter. and when two or more writs of execution against the same debtor, shall be delivered to the officer on the same day, no preference shall be given to either of such writs ; but if a sufficient sum of money be not made to satisfy all executions, the amount

made shall be distributed to the several creditors in proportion to the amount of their respective demands. In all other cases, the writ of execution first delivered to the officer shall be first satisfied. And it shall be the duty of the officer to indorse on every writ of execution, the time when he received the same; but nothing herein contained, shall be so construed as to affect any preferable lien, which one or more of the judgments, on which execution issued, may have on the lands of the judgment debtor.

and when execution first delivered shall be first satisfied. Indorsement of time when received.

Preferable liens saved.

§ 425. The officer to whom a writ of execution is delivered, shall proceed, immediately, to levy the same upon the goods and chattels of the debtor; but if no goods and chattels can be found, the officer shall indorse on the writ of execution "no goods," and forthwith levy the writ of execution upon the lands and tenements of the debtor, which may be liable to satisfy the judgment.

Goods and chattels to be first taken on execution; for want thereof lands to be levied on.

§ 426. If the officer, by virtue of any writ of execution, issued from any court of record in this State, shall levy the same on any goods and chattels claimed by any person other than the defendant, it shall be the duty of said officer, forthwith, to give notice in writing, to some justice of the peace of the county, in which shall be set forth the names of the plaintiff and defendant, together with the name of the claimant; and at the same time he shall furnish the said justice of the peace with a schedule of the property claimed. And it shall be the duty of such justice of the peace, immediately upon the receipt of such notice and schedule, to make an entry of the same upon his docket, and issue a writ of summons, directed to the sheriff, or any constable of the county, commanding him to summon five disinterested men, having the qualifications of electors, who shall be named in said summons, to appear before him the said justice, at the time and place therein mentioned, which time shall not be more than three days after the date of said writ, to try and determine the right of the claimant to the property in controversy. And it shall be the duty of the claimant to give two days notice in writing, to the plaintiff or other party, for whose benefit such execution was issued and levied as aforesaid, his agent or attorney, if within the county, of the time and place of such trial; and he shall, moreover, prove to the satisfaction of said justice that such notice was given, or that the same could not be given by reason of the absence of the party, his agent, or attorney.

When goods and chattels levied on, are claimed by any other person than the defendant, how to proceed.

§ 427. The jury summoned as aforesaid, shall be sworn to try and determine the right of the claimant to the property in controversy, and a true verdict to give, according to evidence. If the jury shall find the right to said goods and chattels, or any part thereof, to be in the claimant, they shall also find the value thereof, and the justice shall render judgment upon such finding of the jury, for the claimant, that he

Same subject.

recover his costs against the plaintiff in execution, or other party to the same, for whose benefit the execution issued, and also that he have restitution of said goods and chattels, or any part thereof, according to the finding of the jury. But if the right of the said goods and chattels, and every part thereof, shall not be in the claimant, according to the finding of said jury, then the said justice shall render judgment on such finding, in favor of the plaintiff in execution, or other party for whose benefit the same was issued and levied, against said claimant for costs, and award execution thereon. Said justice of the peace, in the taxation of costs accruing by reason of such claim and trial, shall allow each juror summoned and sworn, the sum of fifty cents; and for the sheriff, constable, or other officer, and witnesses, and for himself, he shall tax such fees, as are allowed by law, to each, respectively, for like services rendered in other cases. Such judgment for the claimant, (unless an undertaking shall be executed, as provided in the next section,) shall be a justification of the officer in returning "no goods" to the writ of execution, by virtue of which the levy has been made, as to such part of the goods and chattels, as were found to belong to such claimant.

If the jury find for the claimant, plaintiff may tender bond, &c., and have the property sold on the execution.

§ 428. If the jury shall find the property or any part thereof to be in the claimant, and the plaintiff in execution, shall, at any time within three days after such trial, tender to the sheriff or other officer having such property in his custody on execution, an undertaking with good and sufficient sureties, payable to such claimant, in double the amount of the value of such property as assessed by the jury, to the effect that they will pay all damages sustained by reason of the detention or sale of such property, then the sheriff or other officer shall deliver said undertaking to claimant, and proceed to sell such property, as if no such trial of the right of property had taken place, and shall not be liable to the claimant therefor.

When goods levied on remain unsold, officer may take bond for their delivery.

§ 429. In all cases where a sheriff, coroner, or other officer, shall by virtue of an execution, levy upon any goods and chattels which shall remain upon his hands unsold, for want of bidders, for the want of time to advertise and sell, or any other reasonable cause, the officer may, for his own security, take of the defendant an undertaking, with security, in such sum as he may deem sufficient, to the effect that the said property shall be delivered to the officer holding an execution for the sale of the same, at the time and place appointed by said officer, either by notice given in writing to said defendant in execution, or by advertisement, published in a newspaper printed in the county, naming therein the day and place of sale. If the defendant shall fail to deliver the goods and chattels at the time and place mentioned in the notice to him given, or to pay to the officer holding the

Condition of such bond.

What is a breach of its condition.

execution the full value of said goods and chattels, or the amount of said debt and costs, the undertaking, given as aforesaid, shall be considered as broken, and may be proceeded on as in other cases.

§ 430. The officer who levies upon goods and chattels, by virtue of an execution issued by a court of record, before he proceeds to sell the same, shall cause public notice to be given of the time and place of sale, for at least ten days before the day of sale. The notice shall be given by advertisement, published in some newspaper printed in the county, or in case no newspaper be printed therein, by setting up advertisements in five public places in the county; two advertisements shall be put up in the township where the sale is to be held. And where goods and chattels levied upon, cannot be sold for want of bidders, the officer making such return, shall annex to the execution a true and perfect inventory of such goods and chattels; and the plaintiff in such execution may thereupon sue out another writ of execution directing the sale of the property levied upon as aforesaid; but such goods and chattels shall not be sold, unless the time and place of sale be advertised, as hereinbefore provided.

§ 431. When any writ shall issue, directing the sale of property previously taken in execution, the officer issuing said writ, shall, at the request of the person entitled to the benefit thereof, his agent or attorney, add thereto a command to the officer to whom such writ shall be directed, that, if the property remaining in his hands not sold shall, in his opinion, be insufficient to satisfy the judgment, he shall levy the same upon the lands and tenements, goods and chattels, or either, as the law shall permit, being the property of the judgment debtor, sufficient to satisfy the debt.

§ 432. If execution be levied upon lands and tenements, the officer levying such execution shall call an inquest of three disinterested freeholders, who shall be resident within the county where the lands taken in execution are situate, and administer to them an oath, impartially to appraise the property so levied upon, upon actual view; and such freeholders shall forthwith return to the said officer, under their hands, an estimate of the real value in money, of said property.

§ 433. The officer receiving such return, shall forthwith deposite a copy thereof with the clerk of the court from which the writ issued, and immediately advertise and sell such real estate, agreeably to the provisions of this title.

§ 434. If, upon such return as aforesaid, it appear by the inquisition, that two-thirds of the appraised value of said lands and tenements so levied upon is sufficient to satisfy the execution, with costs, the judgment on which such execu-

What notice shall be given previous to the sale of goods on execution.

When goods remain unsold, an inventory thereof to be returned with the execution, and another writ may issue, directing sale, &c.

Such further writ may direct another levy, if the first be insufficient.

Lands to be appraised before sale, by three freeholders.

Copy of appraisalment to be deposited with clerk, and sale then made.

Lien of judgment restricted by two-thirds of appraised value of lands levied on.

Lands not to be sold for less than two-thirds of appraisement except for debts &c., due State, unless, &c.

Property of certain officers to be sold without valuation.

What notice of the sale of lands to be given, and how.

Sale to be examined; confirmed by the court: entry thereof on journal, and order for deed.

Officer may retain purchase money till sale confirmed.

Sheriff to make deed for land sold on execution.

tion issued, shall not operate, as a lien, on the residue of the debtor's estate, to the prejudice of any other judgment creditor. But no tract of land shall be sold for less than two-thirds of the value returned in the inquest; and nothing in this section contained, shall in any wise extend to affect the sale of lands by the State, but all lands therein, the property of individuals, indebted to the State for any debt or taxes, or in any other manner, except for loans heretofore authorized by the legislature, shall be sold without valuation, for the discharge of such debt, or taxes, agreeably to the laws for such case made and provided.

§ 435. If the property of any clerk, sheriff, coroner, justice of the peace, constable, or any collector of State, county, town, or township tax, shall be levied on, for, or on account of any moneys that now are, or may hereafter be by them collected, or received in their official capacity, the property so levied on, shall be sold without valuation.

§ 436. Lands and tenements, taken in execution, shall not be sold, until the officer cause public notice of the time and place of sale to be given, for at least thirty days before the day of sale, by advertisement in some newspaper, printed in the county; or, in case no newspaper be printed in the county, in some newspaper in general circulation therein, and by putting up an advertisement upon the court house door, and in five other public places in the county, two of which shall be in the township where such lands and tenements lie. All sales made without such advertisement, shall be set aside, on motion, by the court to which the execution is returnable.

§ 437. If the court, upon the return of any writ of execution, for the satisfaction of which any lands and tenements have been sold, shall, after having carefully examined the proceedings of the officer, be satisfied that the sale has, in all respects, been made in conformity to the provisions of this title, the court shall direct the clerk to make an entry on the journal, that the court is satisfied of the legality of such sale, and an order that the officer make to the purchaser, a deed for such lands and tenements; and the officer, on making such sale, may retain the purchase money in his hands, until the court shall have examined his proceedings, as aforesaid, when he shall pay the same to the person entitled thereto, agreeably to the order of the court.

§ 438. The sheriff, or other officer, who, upon such writ, or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of the lands and tenements sold, as the person, or persons against whom such writ, or writs of execution were issued, could have made of the same, at, or any time after they became liable to the judgment. The deed shall be sufficient

evidence of the legality of such sale, and the proceedings therein, until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned, as was vested in the party at, or after the time, when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff, or other officer shall recite the execution, or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged and recorded as is, or may be provided by law, to perfect the conveyance of real estate in other cases.

The estate conveyed and effect of deed.

Its recitals.

How executed, &c.

§ 439. The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ of execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper, until the party for whose benefit such execution issued, his agent, or attorney, shall advance to such officer, so much money as will be sufficient to discharge the fees of the printer, for publishing such notice.

Officer may refuse to publish notice of sale of land, &c., until printer's fees advanced.

§ 440. Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent, or attorney, (provided either of them reside in the county,) the fees in said section specified.

Must demand his fees before refusal.

§ 441. All sales of lands or tenements under execution, shall be held at the court house, in the county in which such lands and tenements are situated. No sheriff, or other officer, making the sale of property, either personal, or real, nor any appraiser of such property, shall either, directly or indirectly, purchase the same; and every purchase so made, shall be considered fraudulent and void.

Sales of land to be held at the Court house. Sheriffs and appraisers shall not purchase.

§ 442. If lands and tenements levied on as aforesaid, are not sold upon one execution, other executions may be issued, to sell the lands so levied upon.

Executions to sell lands previously levied on and unsold.

§ 443. In all cases, where two or more executions shall be put into the hands of any sheriff, or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution, or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of the real property of the judgment debtor, or debtors; giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter, be entitled to a preference, the choice of such part of the real property of the judgment

When creditors direct separate levies to be made on separate parcels of land how to proceed.

debtor, or debtors, as will be sufficient, at two-thirds of the appraised value, to satisfy the same. And in all cases where two or more executions, which are entitled to no preference over each other, are put into the hands of the same officer, it shall be the duty of the officer, when required, to levy the same on separate parcels of the real property of the judgment debtor, or debtors, when, in the opinion of the appraisers, the same may be divided without material injury : and if the real property of said debtors will not be sufficient, at two-thirds of its appraised value, to satisfy all the executions chargeable thereon, such part of the same shall be levied on to satisfy each execution, as will bear the same proportion in value to the whole, as the amount due on the execution, bears to the amount of all the executions chargeable thereon, as near as may be, according to the appraised value of each separate parcel of said real property.

Successors of :
sheriff may
make deeds for
lands sold by
predecessor.

§ 444. If the term of service of the sheriff, or other officer, who has made, or shall hereafter make sale of any lands and tenements, shall expire ; or if the sheriff, or other officer shall be absent, or be rendered unable by death, or otherwise, to make a deed of conveyance of the same, any succeeding sheriff, or other officer, on receiving a certificate from the court from which execution issued for the sale of said lands and tenements, signed by the clerk, by order of said court, setting forth that sufficient proof has been made to the court, that such sale was fairly and legally made ; and, on tender of the purchase money, or if the same, or any part thereof be paid, then, on proof of such payment and tender of the balance, if any, may execute to the said purchaser, or purchasers, or his or their legal representatives, a deed of conveyance of the said lands and tenements so sold. Such deed shall be as good and valid in law, and have the same effect, as if the sheriff, or other officer, who made the sale, had executed the same.

Balance after
satisfaction of
execution, to
be paid to de-
fendant.

§ 445. If on any sale made as aforesaid, there shall be in the hands of the sheriff or other officer, more money than is sufficient to satisfy the writ or writs of execution, with interests and costs, the sheriff or other officer shall, on demand, pay the balance to the defendant in execution or his legal representatives.

Reversal of
judgment not
to affect the ti-
tle of purcha-
ser, but pur-
chase money to
be restored.

§ 446. If any judgment or judgments, in satisfaction of which any lands or tenements, are sold, shall at any time thereafter be reversed, such reversal shall not defeat or affect the title of the purchaser or purchasers ; but in such case, restitution shall be made by the judgment creditor of the moneys, for which such lands or tenements were sold, with lawful interest from the day of sale.

Judgment to
lose its prefer-
ence, if execu-
tion be not lev-
ied in one year,
unless, &c.

§ 447. No judgment, heretofore rendered or which hereafter may be rendered, on which execution shall not have been taken out and levied, before the expiration of one year next after its rendition, shall operate as a lien on the estate

of any debtor, to the prejudice of any other bona fide judgment creditor. But in all cases, where [judgment] has been or may be rendered in the district or supreme court, and a special mandate awarded to the court of common pleas, to carry the same into execution, the lien of the judgment creditor shall continue for one year after the first day of the term of the court of common pleas, to which such mandate may be directed. Nothing in this subject contained, shall be construed to defeat the lien of any judgment creditor, who shall fail to take out execution and cause a levy to be made as herein provided, when such failure shall be occasioned by appeal, proceedings in error, injunction, or by a vacancy in the office of sheriff and coroner, or the inability of such officer, until one year after such disability shall be removed. In all cases, where real estate has been or may hereafter be taken on execution and appraised, and twice advertised and offered for sale, and shall remain unsold for want of bidders, it shall be the duty of the court from which such execution issued, on motion of the plaintiff, to set aside such appraisement, and order a new one to be made, or to set aside such levy and appraisement, and award a new execution to issue, as the case may require.

New appraisement, when allowed.

§ 448. The sheriff or other officer, to whom any writ of execution shall be directed, shall return such writ to the court to which the same is returnable, within sixty days from the date thereof.

When executions to be returned.

§ 449. In all cases where judgment is rendered in any court of record within this State, upon any other instrument of writing, in which two or more persons are jointly and severally bound, and it shall be made to appear to the court, by parol or other testimony, that one or more of said persons so bound, signed the same as surety or bail for his or their co-defendant, it shall be the duty of the clerk of said court, in recording the judgment thereon, to certify which of the defendants is principal debtor, and which are sureties or bail. And the clerk of the court aforesaid, shall issue execution on such judgment, commanding the sheriff or other officer, to cause the money to be made of the goods and chattels, lands and tenements, of the principal debtor, but for want of sufficient property of the principal debtor, to make the same, that he cause the same to be made of the goods and chattels, lands and tenements of the surety or bail. In all cases, the property, both personal and real, of the principal debtor, within the jurisdiction of the court, shall be exhausted before any of the property of the surety or bail shall be taken in execution.

Judgments against principal and surety, how entered.

Execution in such case.

§ 450. Each freeholder, summoned to appraise real estate under the provisions of this chapter, shall be allowed and receive for his services, the sum of fifty-cents, for each day he may be so engaged as such appraiser, to be collected

Appraisers' fees, and how collected.

Penalty for neglecting to serve as appraiser, and how collected, and to whom paid.

on the execution, by virtue of which the property appraised was levied on, if claimed at the time of making the return of such appraisement. And when any freeholder, summoned as aforesaid, shall fail to appear at the time and place appointed by the officer, and discharge his duty as appraiser, he shall, on complaint being made to any justice of the peace of the township in which such freeholder resides, forfeit and pay the sum of fifty cents, for every such neglect, unless he can render a reasonable excuse. Such sum shall be collected by said justice, and paid into the township treasury, for the use of the township.

For what causes sheriff or other officer may be amerced.

§ 451. If any sheriff or other officer shall refuse or neglect to execute any writ of execution to him directed, which has come to his hands; or shall neglect or refuse to sell any goods and chattels, lands and tenements; or shall neglect to call an inquest, and return a copy thereof forthwith to the clerk's office, or shall neglect to return any writ of execution to the proper court, on or before the return day thereof, or shall neglect to return a just and perfect inventory of all and singular the goods and chattels by him taken in execution, unless the said sheriff or other officer shall return, that he has levied and made the amount of the debt, damages and costs; or shall refuse or neglect, on demand, to pay over to the plaintiff, his agent or attorney of record, all moneys by him collected or received, for the use of said party, at any time after collecting or receiving the same, except as provided in section four hundred and thirty-seven; or shall neglect or refuse, on demand made by the defendant, his agent, or attorney of record, to pay over all moneys by him received for any sale made, beyond what is sufficient to satisfy the writ or writs of execution, with interest and legal costs; such sheriff or other officer shall, on motion in court and two days notice thereof in writing, be amerced in the amount of said debt, damages and costs, with ten per cent. thereon, to and for the use of said plaintiff or defendant, as the case may be.

Two days notice to be given to sheriff. Amount of amercement.

Clerks of supreme court and common pleas may be amerced for not paying over money, &c.

§ 452. If any clerk of a court, shall neglect or refuse, on demand made by the person entitled thereto, his agent, or attorney of record, to pay over all money by him received, in his official capacity, for the use of such person, every such clerk may be amerced; and the proceedings against him and his sureties shall be the same as provided for in the foregoing section against sheriffs and their sureties.

Amount of amercement for sheriff or clerk for not paying over money.

§ 453. When the cause of amercement is for refusing to pay over money collected as aforesaid, the said sheriff or other officer shall not be amerced in a greater sum than the amount so withheld, with ten per cent. thereon.

Execution issued out of the county may be returned by mail.

§ 454. When execution shall be issued in any county in this State, and directed to the sheriff or coroner of another county, it shall be lawful for such sheriff or coroner having the exe-

cution, after having discharged all the duties required of him by law, to enclose such execution, by mail, to the clerk of the court who issued the same. On proof being made by such sheriff or coroner that the execution was mailed soon enough to have reached the office where it was issued, within the time prescribed by law, the sheriff or coroner shall not be liable for any amercement or penalty, if it do not reach the office in due time.

§ 455. No sheriff shall forward by mail any money, made on any such execution, unless he shall be specially instructed to do it, by the plaintiff, his agent or attorney of record. In all cases of a motion to amerce a sheriff or other officer of any county from which the execution issued, notice in writing shall be given to such officer, as herein before required, by leaving it with him, or at his office, at least fifteen days before the first day of the term at which such motion shall be made, or by transmitting the notice by mail, at least sixty days prior to the first day of the term at which such motion shall be made. All amercements, so procured, shall be entered on the record of the court, and shall have the same force and effect as a judgment.

§ 456. Each and every surety of any sheriff or other officer, may be made party to the judgment rendered as aforesaid, against the sheriff or other officer, by action, to be commenced and prosecuted as in other cases. But the goods and chattels, lands and tenements, of any such surety shall not be liable to be taken on execution, when sufficient goods and chattels, lands and tenements, of the sheriff or other officer against whom execution may be issued, can be found to satisfy the same. Nothing herein contained shall prevent either party from proceeding against such sheriff or other officer, by attachment at his election.

§ 457. In cases where a sheriff, or other officer, may be amerced, and shall not have collected the amount of the original judgment, he shall be permitted to sue out an execution, and collect the amount of said judgment in the name of the original plaintiff, for his use.

Sheriff not to send money by mail without instructions. Notice to amerce sheriff of another county, how given.

Amercement to have the effect of a judgment.

Sureties may be made parties to such judgment against sheriff by action.

Property of sureties not to be taken while sheriff has sufficient.

Party may have attachment against sheriff.

Officer may have execution on original judgment.

CHAPTER II.

PROCEEDINGS IN AID OF EXECUTION.

§ 458. When a judgment debtor has not personal or real property subject to levy on execution, sufficient to satisfy the judgment, any equitable interest which he may have in real

When judgment creditor may proceed against equitable interests, stocks, &c. of the debtor.

estate, as mortgagor, mortgagee, or otherwise, or any interest he may have in any banking, turnpike, bridge, or other joint stock company, or any interest he may have in any money contracts, claims or choses in action due or to become due to him, or in any judgment or decree; or any money, goods, or effects which he may have in the possession of any person, body politic or corporate, shall be subject to the payment of such judgment, by action, or as in this chapter prescribed.

When execution returned unsatisfied, order for discovery of property allowed.

§ 459. When an execution against the property of a judgment debtor, or one of several debtors in the same judgment, issued to the sheriff of the county where he resides, or if he do not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a justice's judgment has been filed, is returned unsatisfied in whole or in part, the judgment creditor is entitled to an order from a probate judge or a judge of the court of common pleas of the county to which the execution was issued, requiring such debtor to appear and answer concerning his property, before such judge, or a referee appointed by such judge, at a time and place specified in such order, within the county to which the execution was issued.

When judgment debtor refuses to apply property to satisfy judgment, order may issue on affidavit before return of execution.

§ 460. After the issuing of an execution against property, and upon proof by the affidavit of the judgment creditor or otherwise, to the satisfaction of the court of common pleas, or a judge thereof, or a probate judge of the county in which the order may be served, that the judgment debtor has property which he unjustly refuses to apply towards the satisfaction of the judgment, such court or judge may, by order, require the judgment debtor to appear at a time and place in said county to answer concerning the same. And such proceedings may thereupon be had for the application of the property of the judgment debtor towards the satisfaction of the judgment as are prescribed in this chapter.

Warrant may issue for arrest of the debtor in certain cases.

§ 461. Instead of the order requiring the attendance of the judgment debtor, as provided in the last two sections, the judge may, upon proof to his satisfaction, by affidavit of the party, or otherwise, that there is danger of the debtor leaving the state or concealing himself to avoid the examination herein mentioned, issue a warrant requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a judge of probate or a judge of the court of common pleas of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the state, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an un-

Manner of proceeding to examine judgment debtor.

undertaking in such sum as the judge may prescribe, with one or more sureties that he will from time to time attend for examination before the judge or referee as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

Undertaking by the debtor.

Proceedings if undertaking not given.

§ 462. No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

The existence of a fraud not to excuse from examination.

§ 463. After the issuing of execution against property, any person indebted to the judgment debtor, may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid, or directed to be credited by the judgment creditor on the execution.

Any debtor may pay execution against his creditor.

§ 464. After the issuing, or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person, or corporation, has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person, or corporation, or any officer, or member thereof, to appear at a specified time and place within the county in which such person, or corporation may be served with the order to answer, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

Examination of debtors of judgment debtor, or of those having property belonging to him.

§ 465. Witnesses may be required upon the order of the judge, or by a subpoena issued by the clerk of the court of common pleas, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

When required to testify.

§ 466. The party or witness may be required to attend before the judge, or before a referee, appointed by the court or judge. If before a referee, the examination must be taken by the referee, and certified by the judge. All examinations and answers before a judge or referee, under this chapter, must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

Compelling party or witness to attend.

Examinations, when to be on oath.

§ 467. The judge may order any property of the judgment debtor, not exempt by law, in the hands either of himself, or any other person, or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, when it is made to

Judge may order property to be applied on execution.

Exemption.

appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly, or partly by his labor.

Judge may appoint receiver, and prohibit transfer, &c., of property.

§ 468. The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner, and with the like authority, as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

Proceedings upon claim of another party to property, or on denial of indebtedness to judgment debtor.

§ 469. If it shall appear, that the judgment debtor has any equitable interest in real estate in the county in which proceedings are had, as mortgagor, mortgagee, or otherwise, and the interest of said debtor can be ascertained as between himself and the person or persons holding the legal estate, or the person, or persons having any lien on, or interest in the same, without controversy as to the interest of such person, or persons holding such legal estate, or interest therein, or lien on the same, the receiver may be ordered to sell and convey such real estate, or the debtor's equitable interest therein. Such sale shall be conducted, in all respects, in the same manner as is provided by this code for the sale of real estate upon execution, and the proceedings of sale shall, before the execution of the deed, be approved by the court in which the judgment was rendered, or the transcript has been filed, as aforesaid, as in cases of sale upon execution.

Undertaking by receiver.

§ 470. If the sheriff shall be appointed receiver, he and his sureties shall be liable on his official bond for the faithful discharge of his duties as such receiver; if any other person shall be appointed receiver, he shall give a written undertaking, in such sum as shall be prescribed by the judge with one or more sureties, to the effect that he will faithfully discharge the duties of receiver, and he shall also take an oath to the same effect, before acting as such receiver. The undertaking mentioned in this section, shall be to the State of Ohio, and actions may be prosecuted for a breach thereof, by any person interested, in the same manner as upon a sheriff's official bond.

Proceedings may be continued.

§ 471. The judge, or referee, acting under the provisions of this chapter, shall have power to continue his proceedings from time to time, until they shall be completed.

Reference by judge.

§ 472. The judge may, in his discretion, order a reference to a referee agreed upon or appointed by him, to report the evidence or the facts.

Disobedience of order how punished.

§ 473. If any person, party, or witness disobey an order of the judge or referee, duly served, such person, party, or witness may be punished by the judge as for a contempt.

Pleadings to be reduced to writing and filed with clerk.

§ 474. The order mentioned in sections four hundred and fifty-nine, four hundred and sixty, four hundred and sixty-four and four hundred and sixty-five, shall be in writing, and

signed by the judge making the same, and shall be served as a summons in other cases. The judge shall reduce all his orders to writing, which, together with a minute of his proceedings signed by himself, shall be filed with the clerk of the court of the county in which the judgment is rendered, or the transcript of the justice filed, and the clerk shall enter on his execution docket, the time of filing the same.

§ 475. The judge shall allow to clerks, sheriffs, referees, receivers and witnesses, such compensation as is allowed for like services in other cases, to be taxed as costs in the case, and shall enforce by order, the collection thereof from such party, or parties, as ought to pay the same.

Compensations
and costs.

§ 476. The judge of probate shall be allowed for his services, under this chapter, the sum of three dollars in each case, and such fees as are allowed by law to clerks of the court of common pleas, for similar services.

Compensation
of probate judge.

CHAPTER III.

EXECUTIONS AGAINST THE PERSON.

§ 477. An execution against the person of the judgment debtor, shall require the officer to arrest such debtor, and commit him to the jail of the county, until he pay the judgment, or be discharged according to law.

Execution
against the
person.

§ 478. An execution against the person of the debtor may be issued upon any judgment for the payment of money :

May issue, for
what cause.

1. When the judgment debtor has removed or begun to remove any of his property out of the jurisdiction of the court, with intent to prevent the collection of the money due on the judgment :

2. When he has property, rights in action, evidences of debt, or some interest or stock in some corporation or company, which he fraudulently conceals, with the like intent :

3. When he has assigned or disposed of all or any part of his property, or rights in action, or has converted the same into money, with intent to defraud his creditors, or with the intent to prevent such property from being taken in execution :

4. When he fraudulently contracted the debt or incurred the obligation upon which the judgment was rendered :

5. When he was arrested on an order before judgment and has not been discharged, as an insolvent debtor, or the order has not been set aside, as improperly made.

§ 479. An execution against the person of the debtor, except as prescribed in section four hundred and eighty-one, can be issued only when the same is allowed by the supreme court, the district court, the court of common pleas, or pro-

By whom and
how allowed.

bate court, or any judge of either, upon being satisfied by the affidavit of the judgment creditor or his attorney, and such other evidence as may be presented of the existence of one or more of the particulars mentioned in section four hundred and seventy-eight.

May be issued
by justice of the
peace.

§ 480. A justice of the peace may issue an execution against the person of a judgment debtor, upon being satisfied of the existence of one or more of the same particulars, by the like affidavit and evidence.

If judgment
debtor arrested
before judgment
and the order is
yet in force, he
may be arrested
after judgment.

§ 481. In all cases in which the judgment debtor was arrested before judgment, and has not been released from imprisonment by an application for relief as an insolvent debtor, and where the order for such arrest has not been adjudged improper, an execution against the person of such judgment debtor may issue of course.

Judgment debt-
or may be dis-
charged from
arrest by deliv-
ery of property.

§ 482. Any person taken in execution as aforesaid, shall be discharged by delivering or setting off to the officer serving the same, if issued from a court of record, real or personal property, if issued from a justice of the peace, personal property only, sufficient to satisfy the judgment and costs for which the writ issued.

Entitled to pris-
on bounds, but
in such case,
execution
against prop-
erty may issue.

§ 483. Any persons imprisoned under the provisions of this article, shall be entitled to prison bounds as prescribed by law; but in case the person shall be out of jail in prison bounds, the judgment creditor, upon whose judgment he was imprisoned, shall be entitled to execution against the lands and tenements, goods and chattels of the debtor, and all other remedies prescribed by this code for the collection of debts.

Death of debtor
no satisfaction
of judgment.

§ 484. The death of a person under arrest in an action does not satisfy the judgment; but an execution may issue thereon, as if no arrest had been made.

A person arrest-
ed before judg-
ment must be
charged in exe-
cution within
ten days after
judgment.
Debtor may be
discharged, if
unable to per-
form the act or
endure impris-
onment.

§ 485. If a person imprisoned under an order of arrest made before judgment, is not charged in execution within ten days after judgment, he shall be discharged from such imprisonment.

§ 486. In cases of commitment under this chapter, or upon arrest before or after judgment in civil cases, the person imprisoned, in case of his inability to perform the act or to endure the imprisonment, may be discharged from imprisonment by the court or judge committing him, or the court or judge thereof in which the judgment was or might be rendered on such terms as may be just.

CHAPTER IV.

EXECUTIONS FOR THE DELIVERY OF REAL PROPERTY.

§ 487. If the execution be for the delivery of the possession of real property, it shall require the officer to deliver the same, particularly describing the property, to the party entitled thereto, and may at the same time require the officer to satisfy any costs or damages recovered in the same judgment, out of the goods and chattels of the party against whom it was rendered, and for the want of such goods and chattels, then out of the lands and tenements, and in this respect it shall be deemed an execution against the property.

Execution for the delivery of real property.

May issue to recover damages for withholding the same and costs.

§ 488. When the judgment is not for the recovery of money or real property, the same may be enforced by attachment by the court rendering judgment, upon motion made, or by a rule of the court upon the defendant; but in either case notice of the motion, or a service of a copy of the rule shall be made on the defendant a reasonable time, before the order of attachment is made.

Execution in certain cases may be enforced by attachment.

CHAPTER V.

JUDGMENT BEFORE JUSTICES OF THE PEACE.

§ 489. In all cases in which a judgment shall be rendered by a justice of the peace, the party in whose favor the judgment shall be rendered may file a transcript of such judgment in the office of the clerk of the court of common pleas of the county in which the judgment was rendered, and thereupon the clerk shall, on the day on which the same shall be filed, enter the case on the execution docket, together with the amount of the judgment and time of filing the transcript.

Transcripts of judgments by justices of the peace may be docketed in common pleas.

§ 490. Such judgment, if the transcript shall be filed in term time, shall have a lien on the real estate of the judgment debtor from the day of the filing; if filed in vacation, shall have a like lien from the first day of the next term of the court, in the same manner, and to the same extent as if the judgment had been rendered in the court of common pleas.

When to operate as a lien on lands.

§ 491. Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same as other executions; and in case of sale of

Execution thereon.

real estate, his proceedings shall be examined, and approved by the court, as in other cases.

Transcript shall certify the amt paid on judgment. Costs of transcript and filing the same paid by plaintiff.

§ 492. The justice of the peace shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same, and the entry of the case on the execution docket, shall be paid by the party filing the same, and not taxed to the other party.

TITLE XV.

MISCELLANEOUS PROCEEDINGS.

- CHAPTER 1. Offer to compromise.
 2. Submitting a controversy.
 3. Offer to confess judgment.
 4. Proceedings by sureties.
 5. Motions and orders.

CHAPTER I.

OFFER TO COMPROMISE.

Defendant may, before trial offer to compromise. If plaintiff fails to recover more he must pay defendant's costs.

§ 493. The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff, or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant, or his attorney, within five days after the offer was served, the offer and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit: and, in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Making an offer to compromise no cause of continuance.

§ 494. The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of the trial.

CHAPTER II.

SUBMITTING A CONTROVERSY.

§ 495. Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction, if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall, thereupon, hear and determine the case, and render judgment, as if an action were pending.

Parties may submit a matter of controversy to the court, without action.

§ 496. The case, the submission and the judgment shall constitute the record.

What constitutes the record.

§ 497. The judgment shall be with costs, may be enforced, and shall be subject to reversal in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

Such judgment may be enforced and is subject to reversal.

CHAPTER III.

OFFER TO CONFESS JUDGMENT.

§ 498. After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and, on the trial, do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

After action brought defendant may offer to confess judgment.

§ 499. Before an action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have judg-

Before action brought defendant may offer to confess judgment.

risdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

CHAPTER IV.

PROCEEDINGS BY SURETIES.

A surety may maintain action against principal.

§ 500. A surety may maintain an action against his principal, to compel him to discharge the debt or liability for which the surety is bound, after the same has become due.

May maintain it to obtain indemnity.

§ 501. A surety may maintain an action against his principal, to obtain indemnity against the debt or liability for which he is bound, before it is due, whenever any of the grounds exist upon which, by the provisions of this code, an order may be made for arrest and bail, or for an attachment.

Remedies in such actions.

§ 502. In such action, the surety may obtain any of the provisional remedies mentioned in Title eight, upon the grounds, and in the manner therein described.

CHAPTER V.

MOTIONS AND ORDERS.

A motion.

§ 503. A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.

May include several objects.

§ 504. Several objects may be included in the same motion if they all grow out of or are connected with the action or proceeding in which it is made.

Notice of a motion.

§ 505. Where notice of a motion is required it must be in writing, and shall state the names of the parties to the ac-

tion or proceeding in which it is made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing.

§ 506. Notices of motions mentioned in this chapter may be served by a sheriff, coroner or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made; and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

How motions served.

§ 507. The service of a notice shall be made as is required by law for the service of a summons, and when served by an officer he shall be entitled to like fees.

Same subject.

§ 508. Motions to strike pleadings and papers from the files, may be made with or without notice as the court or judge shall direct.

Same subject.

§ 509. Every direction of a court or judge made or entered in writing and not included in a judgment, is an order.

An order.

§ 510. Orders made out of court shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

If made out of the court, order to be entered on the journals.

TITLE XVI.

ERROR IN CIVIL CASES.

§ 511. A judgment rendered or final order made by a probate court, justice of the peace, or any other tribunal, board, or officer, exercising judicial functions, and inferior in jurisdiction to the court of common pleas, may be reversed, vacated, or modified by the court of common pleas.

A final judgment or order by probate court or any inferior tribunal may be reversed or modified in common pleas.

§ 512. An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding or upon a summary application in an action after judgment, is a final order which may be vacated, modified, or reversed, as provided in this title.

What constitutes a final order within this title.

§ 513. A judgment rendered or final order made by the court of common pleas, superior court of Cleveland, or superior or commercial courts of Cincinnati, may be reversed, vacated, or modified by the district court, for errors appearing on the record.

The judgment of common pleas may be reversed for errors of record.

Judgment may be reversed, vacated or modified.

§ 514. A judgment rendered or final order made by any court, board, or tribunal mentioned in the three preceding sections, may be reversed, vacated, or modified by the supreme court, for errors appearing on the record; but the petition in error, in such case, can be filed only by leave of the supreme court or a judge thereof.

Proceedings to obtain reversal or modification.

§ 515. The proceedings to obtain such reversal, vacation, or modification, shall be by petition, to be entitled "petition in error," filed in a court having power to make such reversal, vacation, or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party, that a petition in error has been filed in a certain case, naming it, and shall be made returnable on or before the first day of the term of the court, if issued in vacation; if issued in term time, it shall be returnable on a day therein named; if the last publication or service of the summons shall be made ten days before the end of the term, the case shall stand for hearing at that term.

Issue, service, and return of summons.

§ 516. The summons mentioned in the last section, shall, upon the written precept of the plaintiff in error or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the court of common pleas of the county in which such officer resides. The defendant in error or his attorney may waive in writing the issuing or service of the summons.

Plaintiff in error to file transcript of proceedings below.

§ 517. The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified.

By whom and when such transcript to be furnished.

§ 518. Judges of courts of probate, justices of the peace and other judicial tribunals having no clerk, and the clerks of every court of record shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order in said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

When proceedings in error shall stay execution on judgment.

§ 519. No proceeding to reverse, vacate, or modify any judgment or final order rendered in the probate court, court of common pleas, superior court of Cleveland, or superior or commercial court of Cincinnati, or district court, except as provided in the next section, and the fourth subdivision of this section, shall operate to stay execution, unless the clerk of the court in which the record of such judgment or final order shall be, shall take a written undertaking, to be exe-

cuted on the part of the plaintiff in error to the adverse party, with one or more sufficient sureties, as follows :

1. When the judgment or final order sought to be reversed, directs the payment of money, the written undertaking shall be in double the amount of the judgment or order, to the effect that the plaintiff in error will pay the condemnation money and costs in case the judgment or final order shall be affirmed in whole or in part :

Condition of plaintiff's undertaking in such cases.

2. When it directs the execution of a conveyance, or other instrument, the undertaking shall be in such sum as may be prescribed by any court of record in this state or any judge thereof, to the effect that the plaintiff in error will abide the judgment, if the same shall be affirmed, and pay the costs :

3. When it directs the sale or delivery of possession of real property, the undertaking shall be in such sum as may be prescribed by any court of record of this state or any judge thereof, to the effect, that during the possession of such property by the plaintiff in error, he will not commit or suffer to be committed any waste thereon, and if the judgment be affirmed, he will pay the value of the use and occupation of the property from the date of the undertaking until the delivery of the possession, pursuant to the judgment, and all costs. When the judgment is for the sale of mortgaged premises, and the payment of a deficiency arising from the sale, the undertaking must also provide for the payment of such deficiency :

4. When it directs the assignment or delivery of documents, they may be placed in the custody of the clerk of the court in which the judgment was rendered, to abide the judgment of the appellate court, or the undertaking shall be in such sum as may be prescribed as aforesaid, to abide the judgment, and pay costs, if the same shall be affirmed.

§ 520. Instead of the undertaking prescribed in the second subdivision of the last section, the conveyance or other instrument may be executed and deposited with the clerk of the court in which the judgment was rendered or order made, to abide the judgment of the appellate court.

Substitute for the undertaking aforesaid.

§ 521. Before the written undertaking mentioned in section five hundred and nineteen shall operate to stay execution of the judgment or order, the execution of the undertaking and the sufficiency of the sureties, must be approved by the court, in which the judgment was rendered or order made, or by the clerk thereof; and the clerk shall endorse said approval, signed by himself, upon the undertaking, and file the same in his office, for the defendant in error.

Undertaking to be approved.

§ 522. In an action arising on contract, for the payment of money only, notwithstanding the execution of the undertaking, in the last section mentioned to stay proceedings, if the defendant in error give adequate security to make restitu-

Defendant in error may obtain execution of the judgment by giving security to make restitution, &c.

tution in case the judgment is reversed or modified, he may, upon leave obtained from the court below, or a judge thereof in vacation, proceed to enforce the judgment. Such security must be an undertaking executed to the plaintiff in error by at least two sufficient sureties, to the effect that if the judgment be reversed or modified, he will make full restitution to the plaintiff in error of the money by him received under the judgment.

When proceedings in error must be commenced.

§ 523. No proceeding for reversing, vacating, or modifying judgments or final orders shall be commenced unless within three years after the rendition of the judgment, or making of the final order complained of: or, in case the person entitled to such proceeding be an infant, a married woman, a person of unsound mind, or imprisoned, within three years as aforesaid, exclusive of the time of such disability.

Stay of execution on judgment of justice of the peace.

§ 524. No proceeding to reverse, vacate, or modify any judgment rendered, or final order made by a justice of the peace, shall operate as a stay of execution, unless the clerk of the court of common pleas shall take a written undertaking to the defendant, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued, or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside, or reversed, or upon, and after the affirmance thereof in the court of common pleas. The person entitled to such proceeding, shall have the same time for prosecuting the same, before he is barred, as is provided in the last section, unless the said judgment has been paid off, or satisfied prior to the commencement of such proceeding.

Condition of undertaking by plaintiff in error.

Court may order stay of execution in certain cases.

§ 525. Execution of the judgment, or final order of any judicial tribunal, other than those enumerated in this Title, may be stayed on such terms as may be prescribed by the court, or a judge thereof, in which the proceedings are pending.

Proceedings by the appellate court on reversal or modification of a judgment or final order. Supreme or district court not to issue execution, but shall send a special mandate to the common pleas.

§ 526. When a judgment, or final order shall be reversed, either in whole or in part, in the district court, or supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment, or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment, as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and such court to which such special mandate is sent, shall proceed in such cases in the same manner as if such judgment, or final order, had been rendered therein. And on motion, and good cause

Execution upon the mandate.

shown, it may suspend any execution made returnable before it by order of the district or supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the district, or supreme court, as the case may be.

§ 527. When a judgment, or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

Costs in error.

§ 528. A mistake, neglect or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect or omission, occurred.

Misprision of the clerk not grounds of reversal.

§ 529. Rendering judgment before the action stood for trial according to the provisions of this code, shall be deemed a clerical error.

Rendering judgment prematurely a clerical misprision.

§ 530. Writs of error and certiorari to reverse, vacate, or modify judgments, or final orders, in civil cases are abolished, but courts shall have the same power to compel, complete, and perfect transcripts of the proceedings containing the judgment or final order sought to be reversed, to be furnished, as they heretofore had under writs of error and certiorari.

Writs of error abolished.

§ 531. If the judgment of a justice of the peace, taken on error as herein provided to the court of common pleas, be affirmed, it shall be the duty of such court to render judgment against the plaintiff in error, for the costs of suit, and to award execution therefor; and the court shall thereupon order its clerk to certify its decision in the premises, to the justice, that the judgment affirmed may be enforced, as if such proceedings in error had not been taken; or such court may award execution to carry into effect the judgment of such justice, in the same manner as if such judgment had been rendered in the court of common pleas.

Proceedings when judgment of justice of the peace is affirmed on proceedings in error.

§ 532. When the proceedings of a justice of the peace are taken on error, to the court of common pleas, in manner aforesaid, and the judgment of such justice shall be reversed, or set aside, the court shall render judgment of reversal, and for the costs that have accrued up to that time, in favor of the plaintiff in error, and award execution therefor; and the cause shall be retained by the court for trial and final judgment, as in cases of appeal.

Proceedings when judgment of justice is reversed.

§ 533. The final orders, or decrees of courts of chancery heretofore rendered, or which may hereafter be rendered in any chancery proceeding pending at the time this code takes effect, may be reviewed in the same manner, and within the same time, as if this code had not taken effect; and all suits in chancery, pending at that time, may be prosecuted to final decree in like manner.

Decrees and orders in courts of chancery, heretofore rendered, and in cases now pending, subject to review.

PROCEEDINGS TO REVERSE, VACATE, OR MODIFY JUDGMENTS AND
ORDERS IN THE COURTS IN WHICH THEY ARE RENDERED.

Causes for
which court of
common pleas
or district court
may vacate or
modify judg-
ment after the
expiration of
term.

§ 534. A court of common pleas, or district court, shall have power to vacate, or modify its own judgments, or orders, after the term at which such judgment, or order, was made :

1. By granting a new trial for the cause, within the time, and in the manner prescribed in section three hundred and one :

2. By a new trial granted in proceedings against defendants constructively summoned, as provided in section seventy:

3. For mistake, neglect or omission, of the clerk, or irregularity in obtaining a judgment, or order :

4. For fraud practiced by the successful party in obtaining the judgment or order :

5. For erroneous proceedings against an infant, married woman, or person of unsound mind, where the condition of such defendant does not appear in the record, nor the error in the proceedings :

6. For the death of one of the parties before the judgment in the action :

7. For unavoidable casualty or misfortune, preventing the party from prosecuting or defending :

8. For errors in a judgment shown by an infant in twelve months after arriving at full age, as prescribed in section three hundred and eighty-six:

9. For taking judgments, upon warrants of attorney, for more than was due to the plaintiff, when the defendant was not summoned, or otherwise legally notified of the time and place of taking such judgment.

Motion to cor-
rect misprision
of clerk or va-
cate judgment,

§ 535. The proceedings to correct mistakes or omissions of the clerk, or irregularity in obtaining a judgment, or order, shall be by motion, upon reasonable notice to the adverse party, or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

Motions to va-
cate or modify
judgment must
be by petition
and affidavit.

§ 536. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of section five hundred and thirty-four, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate, or modify it, and the defence to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of an action.

§ 537. The court may first try and decide upon the grounds to vacate, or modify a judgment, or order, before trying, or deciding upon the validity of the defence or cause of action.

The grounds relied on may be first tried.

§ 538. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defence to the action in which the judgment is rendered; or if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it, shall be preserved to the modified judgment.

Certain conditions on which judgment may be vacated or modified.

§ 539. The party seeking to vacate or modify a judgment or order, may obtain an injunction suspending proceedings on the whole or part thereof, which injunction may be granted by the court or any judge thereof, upon its being rendered probable, by affidavit or by exhibition of the record, that the party is entitled to have such judgment or order vacated or modified.

Party seeking to vacate a judgment may obtain an injunction.

§ 540. When the judgment was rendered before the action stood for trial, the suspension may be granted as provided in the last section, although no valid defence to the action is shown; and the court shall make such orders concerning the executions to be issued on the judgment, as shall give to the defendants the same rights of delay he would have had, if the judgment had been rendered at the proper time.

When judgment rendered before action, stood for trial, it may be vacated, though there is no defence.

§ 541. Proceedings to vacate, or modify a judgment, or order, for the causes mentioned in subdivisions four, five and seven of section five hundred and thirty-four, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine within one year after the defendant has notice of the judgment.

Within what periods the proceedings under section 534 may be commenced.

§ 542. The provisions of this title subsequent to section 533, shall apply to the supreme court, and probate court, so far as the same may be applicable to the judgments, or final orders of such courts. The parties shall be limited to the same time in which to commence proceedings, and in estimating time, the Probate Court shall, for this purpose, be considered as holding, in each year, three terms of four months each, the first commencing on the first of January of each year.

Provisions of this title apply to supreme court and courts of probate.

TITLE XVII.

COSTS.

CHAPTER I.

Non-resident
plaintiffs to give
security for
costs.

§ 543. In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by indorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court, in which the action is brought, or in any other to which it may be carried, and for the costs of the plaintiff's witnesses, whether the plaintiff obtained judgment, or not.

Actions to be
dismissed, un-
less such secu-
rity be given.

§ 544. An action in which security for costs is required by the last section, and has not been given, shall be dismissed on the motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

If after action
brought, plain-
tiff becomes a
non-resident,
must give secu-
rity for costs.

§ 545. If the plaintiff in an action, after its commencement, become a non-resident of the county in which it is brought, he shall give security for costs, in the manner, and under the restrictions provided in the two preceding sections.

When addition-
al security for
costs may be re-
quired.

§ 546. In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this State, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by the plaintiff.

When and how
judgment may
be rendered
against surety
for costs.

§ 547. After final judgment has been rendered in an action, in which security for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors, or administrators, for the amount of costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

§ 548. If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit, or prosecution, unless he be an officer, whose duty it is to commence the same.

When informer under a penal statute shall pay costs.

§ 549. Where defendants disclaim having any title, or interest in land, or other property, the subject matter of the action, they shall recover their costs, unless for special reasons, the court decide otherwise.

Costs on disclaimer.

§ 550. Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid, as the court, in its discretion, may direct.

Costs of motions and amendments.

§ 551. Where it is not otherwise provided by this and other statutes, costs shall be allowed, of course, to the plaintiff upon a judgment in his favor, in actions for the recovery of money only, or for the recovery of specific real or personal property.

When allowed of course to plaintiff.

§ 552. If it shall appear that a justice of the peace has jurisdiction of an action, and the same has been brought in any other court, the plaintiff shall not recover costs: and in all actions for libel, slander, malicious prosecution, assault, assault and battery, false imprisonment, criminal conversation, or seduction, actions for nuisance, or against a justice of the peace for misconduct in office, if the damages assessed be under five dollars, the plaintiff shall not recover any costs.

Exceptions on account of jurisdiction. In certain cases if plaintiff recover less than five dollars, he shall not recover costs.

§ 553. Costs shall be allowed, of course, to any defendant upon a judgment in his favor in the actions mentioned in the last two sections.

When allowed of course to defendant.

§ 554. In other actions the court may award and tax costs, and apportion the same between the parties on the same or adverse sides, as in its discretion it may think right and equitable.

When under the control of court.

§ 555. Where several actions are brought on one bill of exchange, promissory note, or other obligation or instrument in writing, against several parties, who might have been joined as defendants in the same action, as allowed by section thirty-eight, no costs shall be recovered by the plaintiff in more than one of such actions, if the parties proceeded against in the other actions, were at the commencement of the previous action, openly within the State.

In several actions against parties to the same instrument, costs recovered in but one action.

§ 556. When a summons is issued to another county than that in which the action or proceeding is pending, it may be returned by mail, and the sheriff shall be entitled to the same fees, as if the summons had issued in the county of which he is sheriff.

Fees on a summons issued out of the county.

TITLE XVIII.

ACTIONS AND PROCEEDINGS IN PARTICULAR CASES.

- CHAPTER 1. Actions concerning real property.
 2. Actions on official securities.
 3. Actions for the partition of real property.
 4. Proceedings upon mandamus.

CHAPTER I.

ACTIONS CONCERNING REAL PROPERTY.

Action to determine adverse claims to real property.

§ 557. An action may be brought by any person in possession by himself or tenant, of real property, against any person, who claims an estate or interest therein, adverse to him, for the purpose of determining such adverse estate or interest.

How plaintiff in an action to recover possession of real property may state his case.

§ 558. In an action for the recovery of real property, it shall be sufficient, if the plaintiff state in his petition, that he has a real estate therein and is entitled to the possession thereof, describing the same, as required by section one hundred and twenty-six, and that the defendant unlawfully keeps him out of the possession. It shall not be necessary to state how the plaintiff's estate or ownership is derived.

How defendant in such action may state his defence.

§ 559. It shall be sufficient, in such action, if the defendant in his answer, deny, generally, the title alleged in the petition, or that he withholds the possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defence is made.

In an action by a tenant in common against a co-tenant, a denial of right must be shown.

§ 560. In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state, in addition to what is required in section five hundred and fifty-eight, that the defendant either denied the plaintiff's right or did some act amounting to such denial.

Where right terminates during the pendency of the action, what recovery.

§ 561. In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

When new trial may be had, of course, in action to recover real property.

§ 562. In an action for the recovery of real property, the party against whom judgment is rendered, may, at any time during the term, at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judg-

ment shall be vacated, and the action shall stand for trial at the next term.

§ 563. No further trial can be had in such action, except upon appeal, unless for good cause shown as in other actions.

§ 564. The parties in an action for the recovery of real property, may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

§ 565. The action of waste is abolished, but any proceedings heretofore commenced, or judgment rendered, or right acquired, shall not be affected thereby: and where the action of waste is specially mentioned and authorized in any statute, it may be used until otherwise provided; but it shall be commenced and proceeded in throughout, in the manner prescribed for the civil action of this code. Wrongs heretofore remediable by actions of waste, are subjects of action as other wrongs, and the same relief shall be granted, as may now be granted under the action of waste.

No further new trial without a showing. Parties may have relief as occupying claimants.

Action of waste abolished, but its relief preserved.

CHAPTER II.

ACTIONS ON OFFICIAL SECURITIES.

§ 566. When an officer, executor or administrator, within this State, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law, entitled to the benefit of the security, may bring an action thereon, in his own name, against the officer, executor, or administrator, and his sureties, to recover the amount, to which he may be entitled, by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

§ 567. A judgment in favor of a party for one delinquency, does not preclude the same or another party, from an action on the same security, for another delinquency.

Who may sue on official bonds.—The action may be maintained on a certified copy of the bond.

One action is no bar to another on the same bond for another cause.

CHAPTER III.

ACTIONS FOR THE PARTITION OF REAL PROPERTY.

§ 568. The provisions of the existing statutes relating to the partition of lands, tenements and hereditaments, are not affected by this code, and partition may be made under the

Existing statutes on partition not affected but applicable to this code.

same, as heretofore, until the legislature shall otherwise provide. The provisions of such statutes shall, also, apply to actions for such partition brought under this act, so far as the same can be so applied to the substance and subject matter of the action, without regard to its form.

CHAPTER IV.

PROCEEDINGS UPON MANDAMUS.

To whom and
for what issued.

§ 569. The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person, to compel the performance of an act, which the law specially enjoins as a duty resulting from an office, trust, or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions, it cannot control judicial discretion.

Not to issue,
when there is
an ordinary
remedy.

§ 570. This writ may not be issued in any case, where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Writ, alterna-
tive or peremp-
tory.

§ 571. The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he, then and there, return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

When peremp-
tory writ may
be allowed.

§ 572. When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must be first issued.

Motion there-
for.

§ 573. The motion for the writ must be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

How allowed
and served.

§ 574. The allowance of the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the de-

defendant duly served neglect to return the same, he shall be proceeded against, as for a contempt.

§ 575. On the return-day of the alternative writ, or such further day, as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition, in a civil action.

Answer on return of writ.

§ 576. If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made, containing new matter, the same shall not in any respect, conclude the plaintiff, who may on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

If no answer, peremptory writ must issue.

§ 577. No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner, as pleadings in a civil action; and the issues thereby joined, must be tried and the further proceedings thereon had in the same manner, as in a civil action.

No pleading but writ and answer.

§ 578. If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or a jury or by referees, in a civil action, and costs; and a peremptory mandamus shall, also, be granted to him without delay.

If judgment for plaintiff damages recovered, and peremptory writ awarded.

§ 579. A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

Such judgment a bar to another action.

§ 580. Whenever a peremptory mandamus is directed to any public officer, body or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court, that such officer, or any member of such body, or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county, where the duty ought to have been performed; and the payment thereof, is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

When a fine may be imposed.

GENERAL PROVISIONS APPLICABLE TO THE WHOLE CODE.

- CHAPTER 1. Process.**
2. Duties of Clerks.
 3. Duties of Sheriffs.
 4. Miscellaneous provisions.
 5. Provisions respecting existing actions.
 6. Provisions as to the operation of the Code.

CHAPTER I.

PROCESS.

Style of all processes. § 581. The style of all process shall be, "The State of Ohio _____ county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk and dated the day it issued.

How process directed when sheriff a party. § 582. An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

Court may appoint a person to make service. § 583. The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it, which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

CHAPTER II.

DUTIES OF CLERKS.

Clerks to issue all process upon precipe filed. § 584. All writs and orders for provisional remedies, and process of every kind shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk demanding the same.

File papers. § 585. It is the duty of the clerk of each of the courts to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

§ 586. He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

Time of filing papers to be endorsed.

§ 587. He shall, upon the return of every summons served, enter upon the docket the name of the defendant or defendants summoned, and the day of the service upon each one. The entry shall be evidence of the service of the summons, in case of the loss thereof.

Entry on docket of parties summoned.

§ 588. He shall keep the records, and books and papers appertaining to the court, and record its proceedings.

Clerks to keep records.

§ 589. The provision of Article VIII. of Title IX. prescribing the duties of clerks of the court of common pleas, shall, as far as they are applicable, apply to the clerks of other courts of record.

Dockets to be prepared by clerks, &c.

§ 590. The clerk of each of the courts shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law. In the performance of his duties, he shall be under the direction of his court.

Powers and duties not enumerated.

CHAPTER III.

DUTIES OF SHERIFFS.

§ 591. The sheriff shall indorse upon every summons, order of arrest, or for the delivery of property, or of attachment or injunction, the day and hour it was received by him.

Sheriff to indorse the time of receiving process.

§ 592. He shall execute every summons, order, or other process, and return the same as required by law; and if he fail to do so, unless he make it appear to the satisfaction of the court, that he was prevented by inevitable accident, from so doing, he shall be amerced by the court in a sum not exceeding one thousand dollars, and shall be liable to the action of any person aggrieved by such failure.

To execute and return process.

§ 593. If the judge of a court having but one judge, or if a quorum of the judges of any court having two or more, fail to attend at the time and place appointed for holding their respective courts, the sheriff shall have power to adjourn the court from day to day until the single judge attends, or a quorum is convened; but, if the single judge be not present in his court, or the quorum of judges in their court, within two days after the first day of the term, then such court shall stand adjourned for the term.

When sheriff may adjourn court from day to day, and effect when judges fail to attend.

Powers and duties not enumerated.

§ 594. The sheriff shall exercise the powers and perform the duties conferred and imposed upon him by other provisions of this code, by other statutes, and by the common law.

CHAPTER IV.

MISCELLANEOUS PROVISIONS.

Duties may be performed by deputies.

§ 595. Any duty enjoined by this code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy.

When affirmation sufficient.

§ 596. Whenever an oath is required by this code, the affirmation of a person conscientiously scrupulous of taking an oath, shall have the same effect.

Time, how computed.

§ 597. The time within which an act is to be done, as herein provided, shall be computed by excluding the first day and including the last: if the last day be Sunday, it shall be excluded.

Right of a party in default to a jury.

§ 598. Section three hundred and seventy-six shall not be construed to impair the right of a party to a jury, if he appear at the trial by himself or attorney, and demand the same.

Person offered as surety may be required to make oath.

§ 599. The ministerial officer, whose duty it is to take security in any undertaking provided for by this code, shall have the right to require the person offered as surety, to make an affidavit of his qualifications, which affidavit may be made before such officer. The taking of such an affidavit shall not exempt the officer from any liability, to which he might otherwise be subject, for taking insufficient security.

Qualifications of sureties.

§ 600. The surety in every undertaking provided for by this code, must be a resident of this State, and worth double the sum to be secured, beyond the amount of his debts, and have property liable to execution in this State, equal to the sum to be secured. Where there are two or more sureties in the same undertaking, they must in the aggregate, have the qualifications prescribed in this section.

Judges of the Supreme Court to make rules.

§ 601. The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the State and revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code: and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court, the district courts, and the courts of common pleas.

CHAPTER V.

PROVISIONS RESPECTING EXISTING ACTIONS.

§ 602. The provisions of this code do not apply to proceedings in actions, or suits pending when it takes effect. They shall be conducted to final judgment, or decree, in all respects, as if it had not been adopted: but the provisions of this code shall apply after a judgment, order, or decree heretofore, or hereafter rendered, to the proceedings to enforce, vacate, modify, or reverse it, except as provided in section five hundred and thirty-three.

Application of the Code to suits pending.

CHAPTER VI.

PROVISIONS AS TO THE OPERATION OF THE CODE.

§ 603. Rights of civil action given, or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in section six hundred and four. If a case ever arise, in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice heretofore in use, may be adopted, so far as may be necessary to prevent a failure of justice.

Rights of action under existing laws to be enforced under this code.

§ 604. Until the legislature shall otherwise provide, this code shall not affect proceedings on habeas corpus, quo warranto, or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce, or alimony; or to establish, or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

This code not to control special proceedings.

§ 605. Where, by statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but the parties may, if they see fit, proceed under this act: and in all such cases, as far as it may be consistent with the statute giving such action and practicable under this code, the proceedings

When a form of action and mode of proceeding expressly provided for by statute, may be used to a certain extent.

shall be conducted in conformity thereto. Where the statute designates by name or otherwise, the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

TITLE XX.

ACTS REPEALED AND OTHER PROVISIONS.

Acts and re-
pealed sections
of acts repealed.

Swain 68.

§ 606. The following acts and parts of acts are hereby repealed:

An act allowing and regulating writs of attachment, passed January 17, 1824.

Swain 162.

An act pointing out the manner in which suits may be prosecuted on the bonds of executors, administrators and officers, passed February 23, 1816.

Swain 321.

An act to provide for the taking of depositions, passed March 3, 1831.

Swain 334.

An act to amend an act entitled "An act to provide for the taking of depositions," passed February 24, 1834.

Swain 335.

An act to amend an act entitled "An act dispensing with proof in certain cases," passed March 9, 1838.

Swain 336.

An act dispensing with proof in certain cases, passed December 18, 1823.

Swain 337.

An act providing the mode of perpetuating testimony in certain cases, passed February 6, 1824.

Swain 406.

Section VII, of an act to regulate the taxation and collection of costs, passed March 9, 1835.

Swain 437.

An act regulating judgment and executions, passed March 1, 1831.

Swain 438.

An act to amend an act entitled "an act regulating judgments and executions," passed April 3, 1837.

Swain 439.

An act to abolish imprisonment for debt, passed March 19, 1838.

Swain 440.

An act amendatory of an act entitled "an act to abolish imprisonment for debt," passed March 16, 1839.

Swain 441.

The first seven sections of an act concerning mesne process in civil and criminal cases, passed February 10, 1831.

Swain 451.

An act to regulate the practice of the judicial courts, passed March 8, 1831.

An act to amend the act to regulate the practice of the judicial courts, passed February 24, 1834. Swan 685.

An act to amend the act entitled "An act to regulate the practice of the judicial courts," passed March 9, 1835. Swan 686

An act further to amend the act to regulate the practice of the judicial courts, passed March 14, 1837. Swan 690.

An act directing the mode of proceeding in chancery, passed March 1831. Swan 698.

An act to amend an act entitled "An act directing the mode of proceeding in chancery," passed March 14, 1838. Swan 717.

Section 3 of an act in relation to incorporated religious societies, passed March 5, 1836. Swan 722.

An act allowing and regulating writs of replevin, passed February 17, 1831. Swan 724.

An act to amend an act allowing and regulating writs of replevin, passed February 18, 1833. Swan 727.

An act to amend the act allowing and regulating writs of replevin, passed March 10, 1837. Swan 727.

An act allowing mutual debts and demands to be set off, and concerning tenders, passed February 19, 1824. Swan 750.

An act for the relief of sureties and bail in certain cases, passed February 22, 1820. Swan 877.

Section nineteen of an act to provide for the regulation of turnpike companies, passed January 7, 1817. Swan 974.

An act further to amend the act entitled "An act to abolish imprisonment for debt," passed March 19, 1838. 41 O L 23.

An act to amend the act entitled "An act to amend an act entitled an act directing the mode of proceeding in chancery," passed March 13, 1843. 41 O L 73.

An act to amend an act entitled "An act defining the powers and duties of justices of the peace, and constables in civil cases," passed March 12, 1844. 42 O L 45.

An act to dispense with taking records in certain cases, and recording depositions, passed March 12, 1844. 42 O L 47.

An act to regulate the practice of the judicial courts, passed March 12, 1844. 42 O L 72.

Section two of an act to regulate judicial proceedings, where banks and bankers are parties, passed March 8, 1845. 43 O L 67.

An act to regulate the judicial courts and the practice thereof, passed March 12, 1845. 43 O L 80.

An act to amend an act entitled "An act to amend the act to regulate the practice of the judicial courts," passed March 12, 1845. 43 O L 114.

An act to amend an act entitled "An act directing the mode of proceeding in chancery," passed March 12, 1845. 43 O L 125.

Sections three and four of an act to amend the act entitled "An act defining the powers and duties of justices of the peace and constables," passed February 17, 1846, and sections eighty-eight and eighty-nine of an act defining the 44 O L 48.

Swan 521.

powers and duties of justices of the peace and constables in civil cases, passed March 14, 1831.

44 O L 15.

An act to provide for the attendance of witnesses where the venue is changed, and in other cases, passed January 22, 1846.

44 O L 34.

An act in relation to writs of error, passed January 31, 1846.

44 O L 51.

An act to amend an act directing the mode of proceeding in chancery, passed February 21, 1846.

45 O L 17.

An act to authorize suits upon contracts of insurance to be brought in the county in which the contract is made, passed January 21, 1847.

45 O L 23.

An act authorizing subpoenas to run into any county in civil cases in which the State is a party in interest, passed February 5, 1847.

45 O L 55.

An act to amend the act regulating judgments and executions, passed February 8, 1847.

46 O L 27.

An act to amend section CV., of the practice act, passed January 11, 1848.

46 O L 32.

An act to provide for the service of process in local actions, passed February 2, 1848.

46 O L 55.

Section two of an act to amend an act fixing the rate of interest, passed February 18, 1848.

46 O L 67.

An act to amend an act entitled "An act to regulate the practice of the judicial courts," passed February 24, 1848.

46 O L 96.

An act to amend "An act directing the mode of proceedings in chancery," passed February 25, 1848.

47 O L 16.

An act further to amend the act entitled "An act to regulate the practice of the judicial courts," passed February 23, 1849.

47 O L 34.

An act to amend an act entitled "An act to amend an act directing the mode of proceeding in chancery," passed March 21, 1849.

48 O L 24.

An act to amend "An act allowing and regulating attachments, and an act allowing and regulating writs of attachment before justices of the peace," passed February 6, 1850.

48 O L 25.

An act in amendment of the practice of the judicial courts, passed March 21, 1850.

48 O L 26.

An act further to amend the act regulating judgments and executions, passed March 20, 1850.

48 O L 32.

An act to amend the several acts directing the mode of proceeding in chancery, passed March 22, 1850.

48 O L 33.

An act to improve the law of evidence, passed March 23, 1850.

48 O L 52.

Section four of an act directing the manner of serving mesne process against railroad companies, passed March 21, 1850.

49 O L 22.

Sections three and four of an act to amend the act entitled "An act to regulate the practice of the judicial courts," passed January 25, 1851.

An act further to amend the act entitled "An act to regulate the practice of the judicial courts," passed March 7, 1851. 49 O L 24.

Section three, of an act to amend the act entitled "An act to amend the act to regulate the practice of the judicial courts," passed February 25, 1848: also, to amend the act passed March 21, 1850, "in amendment of the practice of the judicial courts," passed March 20, 1851. 49 O L 25.

An act to provide for the service of mesne process in certain cases therein named, passed March 20, 1851. 49 O L 26.

An act to amend an act entitled "An act to improve the law of evidence," passed March 22, 1851. 49 O L 27.

Section three, of an act for the more speedy collection of debts, &c., from executors, administrators, and guardians in certain cases, passed March 18, 1851. 49 O L 28.

An act to repeal the 57th section of an act directing the mode of proceeding in chancery, passed March fourteenth, one thousand eight hundred and thirty one, and to direct the manner of, and terms upon which decrees may be opened in causes where the same have been rendered against parties without actual notice, passed March 24, 1852. 50 O L 99.

An act to authorize courts of common pleas to appoint receivers in cases of attachment, and to repeal section four, of the act entitled "An act allowing and regulating writs of attachment," passed November 24, 1852.

Section nineteen of an act for opening and regulating roads and high ways, passed January nineteen, eighteen hundred and fifty-three.

"An act to facilitate the administration of justice in Hamilton county, passed February 20, 1851, is not repealed by this code.

An act to fix permanently the terms and manner of holding the courts of common pleas and the district court in Hamilton county, and to provide for the organization and practice thereof, passed January 23, 1852, is not repealed by section three hundred and seven, or any other section of this code. 50 O L 82.

§ 607 Executors, administrators and guardians, who have given bond in this State with sureties, according to law, are not required to give the undertaking mentioned in section five hundred and nineteen. Executors, &c., need not give bond in certain cases.

§ 608. If the district court affirm a judgment on petition in error, it shall also render judgment against the plaintiff in error for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes that there was reasonable ground for the proceedings in error. Penalty on proceedings in error.

§ 609. A summons in error shall not be issued in any case in which there is upon the minutes of the court, or Effect of a waiver of error.

among the files of the case, a waiver of error by the party or his attorney, endeavoring to commence such proceedings, unless the court in which the petition is to be filed, or a judge thereof, shall endorse on the same, permission to issue such summons.

As to certain cases pending in appellate courts.

§ 610. Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect, shall be preserved. They shall be enforced as provided in section six hundred and two; but process already issued at such time, shall be carried on and executed.

Common pleas may appoint masters.

§ 611. The court of common pleas may appoint in each county such number of persons as shall be necessary to be master commissioners, who shall hold their office for the term of three years unless removed by the court for good cause.

Must be sworn and give security.

§ 612. Before entering upon the duties of his office, a master commissioner must be sworn to perform them faithfully, and with one or more sureties approved by the court, execute an undertaking to the State of Ohio, in such sum as the court shall direct; to the effect that he will pay over all moneys and faithfully discharge the duties of his office. The undertaking shall be filed in the office of the county auditor, and may be sued upon as provided in section five hundred and sixty-six.

§ 613. A master commissioner shall be allowed such fees as are allowed for similar services to other officers.

TITLE XXI.

When this act to take effect.

614. This act shall take effect on the first day of July eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Defining the Jurisdiction and regulating the Practice of Probate Courts.

CHAPTER I.

JURISDICTION OF PROBATE COURTS.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* There is established in each county of this State, a Probate Court, which shall be held at the county seat of each county :

§ 2. The probate court shall have exclusive jurisdiction in probate and testamentary matters, except as hereinafter provided.

Exclusive jurisdiction of Probate Courts.

1. To take the proof of wills, and to admit to record authenticated copies of wills executed, proved and allowed in the courts of any other state, territory or county :

2. To grant and revoke letters testamentary, and of administration :

3. To direct and control the conduct, and settle the accounts of executors and administrators :

4. To enforce the payment of the debts and legacies of deceased persons, and the distribution of the estates of intestates :

5. To appoint and remove guardians, to direct and control their conduct, and to settle their accounts :

6. To grant marriage licenses, and licenses to ministers of the Gospel to solemnize marriages :

7. To make inquests respecting lunatics, insane persons, idiots, and deaf and dumb persons subject by law to guardianship :

8. To make inquests of the amount of compensation to be made to the owners of real estates, when appropriated by any corporation legally authorized to make such appropriations :

9. In the criminal cases hereinafter specified :

10. To try contests of the election of justices of the peace.

§ 3. Probate courts shall have concurrent jurisdiction :

Concurrent jurisdiction of Probate Courts.

1. In the sale of lands on petition by executors, administrators and guardians, and the assignment of dower in such cases of sale :

2. In the completion of real contracts on petition of executors and administrators :

3. In allowing and issuing writs of habeas corpus, and in determining the validity of the caption and detention of

the persons brought before them on such writs of habeas corpus.

To administer oaths and take acknowledgements and depositions.

§. 4. Probate judges shall have power to administer oaths in all cases, where oaths are required by law ; to take the acknowledgment of deeds, mortgages, and other instruments of writing, required by law to be acknowledged, and to take depositions in all cases where the same are authorized to be taken by the laws of this State.

Jurisdiction exclusive of other Probate Judges,

§ 5. The jurisdiction acquired by any probate court over a matter or proceeding, is exclusive of that of any other probate court, except where otherwise provided by law.

CHAPTER II.

ORGANIZATION OF THE COURT.

Official oath.

§ 6. Before any probate judge shall enter upon the discharge of the duties of his office, he shall take an oath or affirmation to support the constitution of the United States, the constitution of the State of Ohio, and that he will faithfully, diligently and impartially discharge the duties of probate judge to the best of his skill and ability. He shall also give an undertaking to the State of Ohio, with sufficient security to be approved by the board of county commissioners of the proper county ; or in the absence of any two of said commissioners from the county, by the auditor and recorder of the proper county, in any sum not less than five thousand dollars, to the effect that he will truly and faithfully pay over all moneys that may by him be received in his official capacity, that he will enter and record all the orders, judgments and proceedings of said court, and faithfully and impartially discharge and perform all the duties of his said office ; which undertaking, with his oath or affirmation endorsed upon the same, shall be lodged with the county treasurer, and such additional or further undertaking may be required by the county commissioners from said probate judge, from time to time, as the state of business in his office may render necessary.

Official undertaking.

By whom approved.

Its amount and condition.

Where lodged.

Additional undertaking may be required.

Judge not to practice law.

§ 7. No probate judge shall practice or be associated with another as a partner in the practice of law in any of the courts of record of this State, or appear as counsel before any justice of the peace or board of arbitrators, or referees ; but nothing in this section contained shall prevent any probate judge of this State from finishing any business by him commenced prior to the passage of this act, not connected with his official business.

Not to act as executor, administrator or guardian.

§ 8. No probate judge shall act as executor or administrator of any estate, or as guardian for any minor, idiot, or

lunatic; and if he shall be interested as heir, legatee, devisee, or in any other manner, in any estate which may be required to be settled in the county where he resides, all such estates and accounts of guardianship shall be settled by the court of common pleas of such county; but any probate judge who was acting as executor, administrator or guardian on the 25th day of February, 1852, may continue to discharge the duties thereof, till said trusts can be duly closed and settled.

§ 9. The probate court shall have a seal to be provided by the commissioners of the proper county, having the same device as the seals of the court of common pleas except there shall be engraved around the margin thereof, in addition to the name of the proper county, the words "Probate Court," instead of the words "Common Pleas." All writs and process issuing from said court shall be under the seal thereof, and shall be dated and signed by the judge issuing the same, and all transcripts issuing from said court under the seal thereof, and signed by the judge thereof, shall be received as evidence of the facts therein contained in all the courts of this State.

Official seal.

§ 10. The judges of said courts shall have the care and custody of all files, papers, books and records belonging to the probate office, and are hereby authorized and empowered to perform the duties of clerks of their own courts. Every probate judge shall have power to appoint a deputy clerk or clerks, each of whom shall, previously to entering upon the duties of his appointment, take an oath or affirmation, faithfully to perform all his duties as deputy clerk, and when so qualified, said deputy may do and perform any and all the duties appertaining to the office of clerk of said court. Every probate judge may take such security from his deputy, as he may deem necessary to secure the faithful performance of the duties of his appointment.

Judge to have care, &c., of papers, books, &c.

May perform the duties of clerk and appoint deputy.

Oath of deputy;

his powers,

and undertaking.

§ 11. The following books shall be kept by the probate court, and blank books for the purpose, shall be procured by the county auditor, at the expense of the county:

Official records.

1. A criminal record, in which shall be made a fair and accurate entry of all criminal actions instituted in said court, with the proceedings had therein:

Criminal record.

2. A civil docket, in which shall be noted the names of parties to all actions and proceedings, and the name of the deceased person, infant, insane person, idiot, or lunatic, in the matter of whose estate the said court shall exercise jurisdiction: It shall also contain a minute of the time of the commencement of such actions and proceedings, and filing the papers relating to any matter in such court, and also a brief note of all orders made in such action, proceeding, or matter, and the time of entering the same:

Civil docket.

3. A journal, in which shall be kept minutes of all official

Journal.

business transacted in the probate court, or by the Probate Judge in all civil actions and proceedings :

Will record.

4. A record of wills in which shall be recorded all wills proven in such court, with a certificate of the probate thereof, and all wills proven elsewhere, with the certificate of probate, authenticated copies of which have been admitted to record by said court :

Final record of causes.

5. A final record, which shall contain a complete record in each cause or matter of all petitions, answers and demurrers, motions, returns, reports, verdicts, awards, orders and judgments ; and which record shall be made up and completed within ninety days after the final order or judgment shall have been made in any of the matters aforesaid ; and he shall also, within thirty days after the return of the same, record all inventories, sale bills, and allowances to widows, in a book to be provided for that purpose :

Record of inventories.

Record of accounts.

6. A final record of accounts, which shall contain an entry of the appointment of executors, administrators and guardians, and all partial and final accounts of executors, administrators and guardians, and the orders and proceedings of the courts thereon :

Execution docket.

7. An execution docket in which shall be entered a memorandum of all executions issued by the probate judge both in civil and criminal cases, stating the names of the parties, the name of the person to whom delivered and his return thereon. It shall also contain the date of issuing the execution and the amount ordered to be collected, stating the costs separately from the fine or damages, and all payments thereon and the satisfaction thereof when the same is satisfied.

Indexes.

§ 12. To each of said books shall be attached an index securely bound in the volume, which shall at all times be kept up with the entries therein, and refer to such entries alphabetically, by the names of the parties or person in which it is originally entered, indicating the page of the book where the entry is made.

Where office kept, and how provided with books and stationery.

§ 13. The probate judge must keep an office at the county seat, open at all reasonable hours suitable for the transaction of business, and for the deposit and safe keeping of the public books, records and papers under his charge. Such office shall be furnished by the county commissioners, and provided with suitable cases, for the safe keeping and preservation of the books and papers of such court, and also with such stationery as may be required by such judge in the discharge of his official duties, at the expense of the county.

CHAPTER III.

POWERS AND DUTIES OF THE PROBATE JUDGE IN CIVIL CASES.

§ 14. The several probate judges shall, from time to time, make rules not inconsistent with the laws of this State, for regulating the practice and conducting the business in their respective courts; and they shall within one year after this act shall take effect, return a statement of their rules and course of proceedings to the supreme court, and shall make a like return of all their rules thereafter made, as soon as convenient after making the same; and the supreme court shall have power to alter and amend all such rules, and to make other and further rules, from time to time, for regulating the proceedings in all the probate courts of this State, as they shall judge necessary in order to introduce and maintain regularity and uniformity in the said proceedings.

Rules of practice to be made and returned to supreme court.

Which shall have power to alter same.

§ 15. Orders for the payment of money may be enforced by execution or otherwise, in the same manner as judgments in the courts of common pleas. All such executions shall be directed to the sheriff, or in his absence or disability, to the coroner.

Executions.

§ 16. If any person shall neglect or refuse to perform any order or judgment of a probate court, other than for the payment of money, he shall be deemed guilty of a contempt of court, and said probate judge shall issue a summons directing him to appear before said Judge within two days from the service thereof, and show cause why he should not be punished for his contempt; or if it appear to such judge that he is secreting himself to avoid the process of the court, or is about to leave the county for such purpose, said judge may issue an attachment instead of the summons above mentioned, commanding the officer to whom the attachment shall be directed, forthwith to bring such person before such judge to answer for his contempt; and if no sufficient excuse be shown, he shall be punished in the same manner as provided for the punishment of contempts in the court of common pleas.

Contempt.

How punished.

§ 17. If any sheriff, coroner or constable shall neglect, or refuse to serve and return any process issued by said probate judge, and to him directed and delivered, or shall neglect or refuse to pay over any moneys by him collected, to the probate judge, or any other person, when so directed by such probate judge, he shall be subject to fine and amercement, as in the next section provided.

Sheriff or other officer failing to serve process or pay over money how punished.

§ 18. In the cases enumerated in the preceding section, it shall be the duty of the probate judge to issue a summons directed to the sheriff, or other officer therein named, com-

How judge shall proceed.

Punishment of officer for failing to serve process.

manding him to summon the officer guilty of such misconduct, to appear within two days after the service of such summons, and show cause why he should not be amerced, specifying the cause for such amercement; and in case of neglect or refusal to serve or return any process issued by such probate judge, and directed and delivered to such officer, if no sufficient excuse be shown, such officer shall be fined by said probate judge in any sum not exceeding one hundred dollars, to be paid into the county treasury; and he and his sureties shall moreover be liable upon his official bond for all damages sustained by any person by reason of such misconduct; and in case of refusal to pay over any moneys by him collected, to the probate judge, or any other person, when so directed by such probate judge, he shall be amerced for the use of the parties interested, in the amount by such process required to be collected, together with ten per cent thereon; and such probate judge may enforce the collection thereof by execution or other process, or by imprisonment, as for a contempt of court, or both; the delinquent officer and his sureties, shall moreover be liable on his official bond for the amount of such amercement at the suit of the person or persons interested.

Depositions may be taken and read in probate court.

§ 19. Depositions taken according to the provisions of the law for taking depositions to be used on the trial of civil causes, may be taken and used on the trial of any question before the probate court, where such testimony may be proper.

Notice of filing accounts to be given.

§ 20. It shall be the duty of the probate judge to cause notice to be published in some newspaper of the county, if any be published therein, or if not, by posting the same upon the door of the court house of said county, of the filing of any accounts by executors, administrators or guardians, specifying the time when such accounts will be heard, which shall not be less than three weeks after the publication of such notice, at which time it shall be competent for said probate judge, for cause, to allow further time to file exceptions to said account; and the costs of such notice shall be paid, if more than one account be specified in the same notice, in equal proportions by the executors, administrators, or guardians respectively.

What it shall specify.

Further time to file exceptions. How cost of notice paid.

Power to examine executor, administrator and guardians on oath.

§ 21. The probate judge shall have full power and authority to examine under oath, all executors, administrators and guardians, touching their accounts; and if he shall think proper to do so, he may reduce such examination to writing, and require such executor, administrator, or guardian, to sign the same, and such examination shall be filed with the papers in the case.

Examination to be filed.

Appeal from refusal to admit will to probate.

§ 22. In case of the refusal to admit a will to probate, any person aggrieved thereby may appeal from such decision

to the next term of the court of common pleas, by filing notice of his intention to appeal within ten days.

§ 23. The person appealing shall procure and file in the court of common pleas a certified copy of the order of said probate court rejecting the will, and thereupon said appeal shall be deemed perfected.

Copy of order to be filed in common pleas.

§ 24. When a will shall be admitted to probate in the probate court, or court of common pleas on appeal, any person interested shall have a right to contest its validity by petition to the court of common pleas of the proper county, and upon filing such petition the clerk of the court of common pleas shall certify that fact to the probate court in which the will was admitted to probate.

How will contested.

§ 25. When a petition to contest the validity of a will is filed, as provided in the last section, the will, testimony and all papers relating thereto, shall be transmitted by the probate judge to the court of common pleas, and the judgment of the court of common pleas shall be certified by the clerk thereof, to the probate court. When the case is finally determined, the will shall be deposited in the probate court.

Same subject.

§ 26. All undertakings required or authorized by law to be given in the probate court shall be, on being accepted and approved by the probate judge, filed in his office.

Undertakings to be approved and filed.

§ 27. When notice of any proceedings in a probate court shall be required by law, or be deemed necessary by the probate judge, and the manner of giving the same shall not be directed by any statute, the probate judge shall order notice of such proceedings to be given to all persons interested therein, in such manner and for such length of time as he shall deem reasonable.

How notice of proceedings given.

§ 28. All questions, except those arising in criminal actions and proceedings, unless otherwise provided by law, shall be determined by the probate judge, unless in his discretion he shall order the same to be tried by a jury, or referred, as provided in section two hundred and eighty-five of the Code of Civil Procedure of this State.

What questions to be determined by judge.

CHAPTER IV.

HIS POWERS AND DUTIES IN CRIMINAL ACTIONS.

§ 29. The several probate courts in this State shall not have jurisdiction of any crime, offence or misdemeanor, the punishment whereof is capital, or by imprisonment in the penitentiary, nor for any offence or misdemeanor, the original and exclusive jurisdiction of which is vested in justices of the peace, or in any mayor or magistrate of any town or city, nor of the crimes or offences mentioned in an act entitled

Not to have jurisdiction of certain offences.

| | |
|--|---|
| To have exclusive cognizance of other offences | <p>"an act to punish certain crimes therein named," passed March 18, 1839, nor of the crimes or offences enumerated in the act entitled "an act to provide for the punishment of certain crimes therein named," passed February 27, 1834, nor for violations of the "act to prevent obstructing navigable streams therein named," passed March 1, 1834; but they shall have exclusive cognizance of all other crimes, offences or misdemeanors, unless otherwise provided by law.</p> |
| What recognizances to be filed in probate court. | <p>§ 30. All recognizances which shall hereafter be taken by justices of the peace and other officers authorized to take the same, and all transcripts in criminal cases, within the jurisdiction of the probate court, shall be returned to the probate judge forthwith after the commitment of a person charged with an offence, or the taking of a recognizance for his appearance before the probate court.</p> |
| Act repealed. Swan p. 254. | <p>§ 31. The second section of the act entitled "an act to punish betting on elections, and for other purposes," passed March 18, 1839, and the fifty-second section of "an act for the punishment of certain offences therein named," passed March 18, 1831, are repealed.</p> |
| Disposition of fines. | <p>§ 32. All fines imposed by the probate judge for crimes, offences or misdemeanors, shall be paid into the county treasury so soon as the same shall be collected.</p> |
| Limitation of criminal jurisdiction. | <p>§ 33. The provisions of this act which relate to the exercise of criminal jurisdiction by the probate courts, shall not extend to any county in and for which a special criminal court is now, or may hereafter be established by law.</p> |
| Indictment not required. | <p>§ 34. In no prosecution for crimes, offences and misdemeanors, cognizance of which is by this act conferred upon probate courts, shall an indictment by a grand jury be required; but in all criminal cases brought before the probate court by filing a recognizance and transcript, as hereinbefore provided, the probate judge shall immediately give notice to the prosecuting attorney of his county, of the pendency of such cause; and such prosecuting attorney shall immediately file with said probate court an information setting forth briefly but distinctly, in plain and ordinary language, the charge against the accused person, on which charge such person shall be tried.</p> |
| Amendments allowed. | <p>§ 35. Informations may be amended at any time, before or during the trial, upon such terms as the court may direct; and in all cases where such amendment is material, the defendant may elect to continue the case.</p> |
| Defendant required to plead. | <p>§ 36. In the cases in which the probate court shall have criminal jurisdiction when the defendant is brought before the probate judge, the charge against him shall be distinctly read to him, and he shall be required to plead thereto.</p> |
| | <p>§ 37. The defendant may plead, 1. Guilty:</p> |

2. Not guilty :

3. A former judgment of conviction or acquittal of the offence charged, which may be pleaded either with or without the plea of not guilty.

§ 38. Every plea shall be oral, and shall be entered on the minutes of the court in substantially the following form :

Plea to be oral.

1. If the defendant plead guilty—"the defendant pleads that he is guilty of the offence charged against him :"

Form.

2. If he plead not guilty—"the defendant pleads that he is not guilty of the offence charged against him :"

3. If he plead a former conviction or acquittal—"the defendant pleads that he has already been convicted [or acquitted, as the case may be] of the offence charged against him, by the judgment of the court of — [naming it]— ordered at — [naming the place] on the — day of —."

§ 39. The court may at any time before judgment, upon a plea of guilty, permit [it] to be withdrawn, and a plea of not guilty substituted.

Plea may be withdrawn.

§ 40. The plea of not guilty shall be deemed a denial of every material allegation in the information, and all matters of fact, tending to establish a defence, may be given in evidence under the plea of not guilty.

Plea of not guilty.

§ 41. If the defendant refuse to answer the information, a plea of not guilty shall be entered.

If defendant refuse to answer.

§ 42. Upon a plea other than a plea of guilty, if the defendant do not demand a trial by jury, the probate judge shall proceed to try the issue.

Judge to try cause, if jury not demanded.

§ 43. Before the court shall have heard any testimony upon the trial, the defendant may demand a trial by jury.

Defendant may demand jury.

§ 44. When the defendant pleads guilty, or is convicted either by the probate judge or by a jury, the probate judge shall render judgment thereon, of fine or imprisonment, or both, according to law.

Judgment on plea of guilty.

§ 45. When the defendant is acquitted, either by the probate judge or by a jury, he shall be immediately discharged; and if the probate judge certify in his minutes, that the prosecution was malicious or without probable cause, he may order the prosecutor to pay the costs of the proceedings, and enter up judgment therefor, which may be enforced by execution.

If acquitted, defendant to be discharged.

Judge may enter judgment against prosecutor.

§ 46. The prosecuting attorney, if he be satisfied that the State will fail in the action, or if the prosecutor refuse to endorse the information when required so to do, may enter a nolle prosequi upon the information.

When Prosecuting Attorney may enter nolle prosequi.

§ 47. The probate judge shall be paid for his services, in criminal cases, such sum as the commissioners of the county may allow, not less than one hundred dollars per an-

Fees of Judge in criminal cases.

num in any county, nor more than three hundred dollars in any county containing less than fifty thousand inhabitants, which sum shall be payable at the county treasury ; and the probate judge shall not receive any compensation by way of fees, for services in criminal business, in addition to the compensation herein provided for: *Provided, however*, the said probate judge shall tax, in all criminal cases, the fees to which he would otherwise be entitled, and all other costs of the proceedings, which shall, when collected, together with all fines, be paid into the county treasury.

Terms of court.

§ 48. In the exercise of its criminal jurisdiction, the probate court shall be considered as holding monthly terms, each commencing on the first Monday of the month.

How jurors selected.

§ 49. One hundred and eight judicious persons, having the qualifications of electors, shall be annually selected in each county to attend as jurors in the probate court, in the manner prescribed by law for the selection of jurors to attend the court of common pleas ; and such separate list shall be delivered to the probate judge by the trustee or judge of election at the same time the list for the court of common pleas is required to be delivered to the clerk of that court ; and the persons named in the list delivered to the probate judge shall serve as jurors in the probate court under the provisions of this act: *Provided*, that prior to the selection and return of such jurors for the year 1853, as provided by law, said probate court shall cause to be summoned for each term the proper number of persons having the required qualifications, to serve as jurors for such term.

Same subject.

§ 50. The names of the persons selected to serve as jurors in the probate court shall be written on separate pieces of paper and deposited in a box to be provided at the expense of the county ; and at least ten days before a term of the probate court, unless by a written entry in his minutes the judge shall dispense with or postpone the attendance of a jury, he shall, in the presence of the sheriff of the county, proceed to shake the box and draw therefrom six ballots, and shall forthwith deliver a list of the jurors drawn to the sheriff, deputy sheriff, or a constable of the county, with an endorsement thereon signed by him, with his name and seal of office to the following effect: " A. B., sheriff [or deputy sheriff, or constable,] of the county of —, to which this is delivered, is required to summon the persons named in the within list to appear before me at — [naming the place] on, [naming the day and hour,] to serve as jurors at a probate court to be then and there held. Dated at —, the day of —, 18—.

To whom list delivered.

Form thereof.

J. W. [SEAL.]
Probate Judge.

§ 51. The officer to whom the list is delivered, shall forthwith summon each of the jurors named therein, personally, or by leaving a written notice at his place of residence, with some person of suitable age and discretion. He shall also, at or before the time named therein, return the list to the probate judge, specifying the persons summoned, and the manner of service in respect to each of them.

Officer to serve same and make return.

§ 52. Each party shall be entitled to two peremptory challenges, and such other challenges for cause, as the probate judge may allow; and if six jurors do not attend or be not obtained, the judge may direct the sheriff or other officer in attendance to summon any of the bystanders or others, who may be competent, against whom no sufficient cause of challenge shall appear, to act as jurors. When six jurors appear, and are accepted, they shall constitute the jury. The failure to attend by any person when duly summoned, shall be punished as in like cases in the court of common pleas. And the jury, when so sworn or affirmed, shall hear the proofs of the parties, which must be delivered in public and in the presence of the defendant.

Challenges.

When jurors do not attend, others to be summoned.

Punishment for failing to attend.

Proofs to be heard and delivered in public.

§ 53. The probate judge shall thereupon administer to the jury the following oath or affirmation: "You do solemnly swear" [or "you do solemnly affirm," as the case may be,] "that you [will] well and truly try the issue between the State of Ohio, and the defendant, and a true verdict give according to law and evidence. So help you God."

Oath to jury.

§ 54. The jury shall not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless the probate judge, upon their disagreement, shall sooner discharge them; and when they shall have so agreed upon their verdict, they shall deliver it publicly to the probate judge, who shall enter it in his minutes.

Jury not to be discharged after cause submitted except on disagreement. Verdict to be delivered publicly.

§ 55. If the jury be discharged, as provided in the last section, the probate judge may proceed again to the trial in the same manner as upon the first trial, and so on until a verdict shall be rendered.

If jury discharged, trial may again proceed.

§ 56. The fees of the witnesses, officers and jurors, shall be certified to by the probate judge, and paid out of the county treasury, in the same manner as such fees are now paid for like services in the court of common pleas.

How fees of witnesses, officers and jurors paid.

CHAPTER V.

GENERAL PROVISIONS.

§ 57. The fees of witnesses, jurors, sheriffs, coroners and constables, for all services rendered in the probate court, or by order of the probate judge, shall be the same as is provided by law for like services in the court of common pleas.

Fees of witnesses, jurors, and certain officers.

Powers, duties
and rules of
judge.

§ 58. In the exercise of the jurisdiction conferred by this act, the probate judge shall have the same powers, perform the same duties, and be governed by the same rules and regulations, as are provided by law for the courts of common pleas and the judges thereof, in vacation, so far as the same may be consistent with this and other acts now in force.

Power to keep
order.

§ 59. The probate judge shall have power to keep order in his court, and to punish any contempt of his authority, in like manner as such contempt might be punished in the court of common pleas.

And issue pro-
cess &c.

§ 60. He shall have power to issue all warrants, attachments, and other process, and all notices, commissions, rules, and orders, not contrary to law, that may be necessary and proper to carry into effect the powers granted to him.

Duties of sheriff,
coroner and
constables.

§ 61. Sheriffs, deputy sheriffs, coroners and constables, shall, when required by the probate judge, attend the probate court, and shall serve and return all process directed to them by the probate judge, except as provided in section 17 of this act.

Clerk common
pleas to transfer
to probate court
certain records,
papers, &c.

§ 62. The several clerks of the courts of common pleas of this State, are hereby required to transfer to the probate court of their respective counties, all records, files, papers and proceedings, appertaining to the exclusive jurisdiction of said probate courts, so far as the same are capable of being separated from the proper journals and records of the courts of common pleas, and shall also make out and certify full transcripts of any journal entries relating to the probate matters which may be pending in said courts on request of any probate judge, or person interested.

And certify
transcript.

Actions pending
not affected by
this act.

§ 63. Actions and proceedings now pending in the courts of common pleas and in the probate courts shall not be affected by the provisions of this act. They shall be conducted throughout, as if it had not been adopted, and no rights acquired shall be affected by it. "An act defining the jurisdiction and regulating the practice of probate courts," passed February 25, 1852, is repealed.

Repealing O. L.,
vol. 50, p. 84.

When to take
effect.

§ 64. And this act shall take effect and be in force from and after the first day of July, 1853.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tem.

March 14, 1853.

AN ACT

Of the Jurisdiction and Procedure before Justices of the Peace, and of the Duties of Constables in Civil Cases.

ARTICLE I.

OF THE JURISDICTION OF JUSTICES OF THE PEACE.

Be it enacted by the General Assembly of the State of Ohio :

§ 1. The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the township wherein they may have been elected, and where they shall reside.

Jurisdiction in civil cases limited to township.

§ 2. Justices of the peace within and co-extensive with their respective counties, shall have jurisdiction and authority:

Jurisdiction.

1. To administer any oath or affirmation authorized or required by law to be administered:

To administer oaths.

2. To take the acknowledgement of deeds, mortgages, and other instruments of writing:

Take acknowledgements.

3. To solemnize marriages:

Solemnize marriages.

4. To issue subpoena for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions:

To compel attendance of witnesses.

5. To try the action for the forcible entry and detention, or the detention only, of real property:

In forcible entry and detainer.

6. To proceed against security for costs and bail for the for the stay of execution on their dockets:

7. To issue attachment and proceed against the goods and effects of debtors in certain cases:

In attachment.

8. To issue executions on judgments rendered by them:

To issue execution.

9. To proceed against constables failing to make return, making false return, or failing to pay over money collected on execution issued by such justice:

To proceed against constables.

10. To try the right of the claimant to property taken in execution or on attachment:

Try rights of property.

11. To act in the absence of the probate judge in the trial of contested elections of justices of the peace:

To act in contested cases—when.

§ 3. No householder or freeholder resident of the county, shall be held to answer any summons issued against him by a justice, in a civil matter, in any township of such county other than the one where he shall reside, except in the cases following:

Suit against householder or freeholder to be brought where he resides, except:

No justice in township ;

Or he be interested, or related to either party.

When suit to be in adjoining township.

In attachments.

And where the defendants reside in different townships, where suit brought.

Also in trespass.

Extent of jurisdiction.

Same subject.

1. Where there shall be no justice of the peace for the township in which the defendant may reside ; or

2. Where the only justice residing therein is interested in the controversy ; or

3. Where he shall be related, as father, father-in-law, son, son-in-law, brother, brother-in-law, guardian, ward, uncle, nephew, or cousin, to either of the parties, and there is no justice in the township competent to try the cause. In the foregoing excepted cases, the action may be brought before any justice of an adjoining township of the same county, and the justice shall state on his docket the reason of his taking jurisdiction :

4. Where the summons is accompanied with an order to attach property, the jurisdiction shall be co-extensive with the county :

5. When two or more persons shall be jointly, or jointly and severally bound in any debt or contract, or otherwise jointly liable in the same action, and reside in different townships of the same county, the plaintiff may commence his action before a justice of the township in which any of the persons liable reside, except that in joint actions against the makers and endorsers of notes, due-bills, or bills of exchange, the action shall be commenced in the township where one of the original makers, drawers, or endorsers reside, and if it be claimed by the plaintiff that an endorser endorsed the note or bill at the time it was made, and the jurisdiction depend thereon, before the justice shall take jurisdiction, the plaintiff, or some person for him, shall file an affidavit setting forth that fact :

6. In cases of trespass, to real or personal property, it shall be lawful to bring the action in the township where the trespass was committed, or in the township where the trespasser, or any one of several trespassers reside.

§ 4. Under the restrictions and limitations herein provided, justices of the peace shall have cognizance of any sum not exceeding one hundred dollars.

§ 5. When the balance claimed to be due on any open or unsettled account, or on any bill, note, or bond, shall be less than one hundred dollars, the party by whom such balance shall be claimed, may commence his action therefor before a justice of the peace : who shall have power, and he is hereby authorized to hear and determine the matters in controversy without regard to the amount of the original account or contract, and he may render judgment for any balance found due, not exceeding one hundred dollars, and if any plaintiff appeal from a judgment entered in his favor for such balance, and shall recover judgment for a sum greater than one hundred dollars, besides interest and costs, he shall not recover costs on such appeal.

§ 6. In actions founded upon an undertaking given in pursuance of law in any civil proceeding pending before a justice, such justice or his successor in office, shall have jurisdiction co-extensive with his county, and where the sum due or demanded on such undertaking exceeds one hundred dollars, the jurisdiction shall be concurrent with the court of common pleas of the proper county.

Same subject.

§ 7. If any debtor shall appear before a justice of the peace without process, and confess that he is indebted to another, it shall be lawful for such justice, on the application of the creditor, to render judgment on such confession against the debtor for any sum not exceeding two hundred dollars.

Judgment by confession.

§ 8. Whenever the office of coroner shall become vacant, in any county, by death, resignation, expiration of the term of office, or otherwise, or where the coroner shall be absent from the county, or unable from sickness or other cause to discharge the duties of his office, or shall reside more than ten miles distant from the place where the dead body of any person supposed to have come to his or her death by violence or casualty, may be found, any justice of the peace of the county, shall be vested with all the powers, and shall perform all and singular the duties appertaining to the office of coroner, so far as it respects the power and duty of a coroner to hold inquisition over any dead body found as aforesaid. And when acting in the capacity of a coroner, every such justice shall be entitled to the same fees as are or may be allowed by law to coroners in such cases.

When justice to act as coroner.

§ 9. Justices shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such trespass shall not exceed one hundred dollars, and no claim of title to such real estate set up by the defendant, shall take away, or affect the jurisdiction hereby given.

Jurisdiction in trespass.

§ 10. Justices shall not have cognizance of any action:

No jurisdiction in—
Assaults.

1. To recover damages for an assault, or assault and battery; or

2. In any action for malicious prosecution; or

Malicious prosecution.
Actions against justices, except:

3. In actions against justices of the peace, or other officers for misconduct in office, except in the cases provided for in this act; or

4. In actions for slander, verbal or written; or

Slander;
Actions on land contracts;

5. In actions on contracts for real estate; or

6. In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions of trespass on real estate, which are provided for in this act.

Where title to lands is in question, except.

ARTICLE II.

OF THE COMMENCEMENT OF SUITS, SERVICE AND RETURN OF
PROCESS, AND PROCEEDINGS IN ARREST AND ATTACHMENT.

How actions
commenced.

§ 11. Actions before justices of the peace are commenced by summons, or by the appearance and agreement of the parties without summons. In the former, the action is deemed commenced upon delivery of the writ to the constable to be served, and he shall note thereon the time of receiving the same. In the latter case, the action is deemed commenced at the time of docketing the case.

When guardian
necessary, how
appointed.

§ 12. When a guardian to the suit is necessary, he must be appointed by the justice, as follows:

1. If the infant be plaintiff, the appointment must be made before the summons is issued, upon the application of the infant if he be of the age of fourteen years or upwards; if under that age, upon the application of some friend.

The consent in writing of the guardian to be appointed, and to be responsible for costs if he fail in the action, must be filed with the justice.

2. If the infant be defendant, the guardian must be appointed before the trial. It is the right of the infant to nominate his own guardian if the infant be over fourteen years of age and the proposed guardian be present and consent in writing to be appointed. Otherwise the justice may appoint any suitable person who gives such consent.

The summons.

§ 13. The style of the summons shall be, "The State of Ohio, ——— county:" it shall be dated the day it is issued, signed by the Justice issuing the same, directed to a constable of the proper township, (except in case a person be deputed to serve it, in which case it shall be directed to such person,) must contain the name or names of the defendant or defendants, if known; if unknown, give a description of him or them, and command the officer or person serving the same to summon the defendant or defendants to appear before such justice at his office in ——— township, at a time specified therein, and must describe the plaintiff's cause of action in such general terms as to apprise the defendant of the nature of the claim against him, and there shall be endorsed on the writ the amount for which the plaintiff will take judgment if the defendant fail to appear. If the defendant fail to appear, judgment shall not be rendered for a larger amount and the costs.

When served.

§ 14. The summons must be returnable not more than twelve days from its date, and must, unless accompanied

with an order to arrest, be served at least three days before the time of appearance, as follows :

1. By delivering a copy of the summons with the endorsement thereon, (certified by the constable, or person serving the same to be a true copy) to the defendant, or leaving the same at his usual place of residence.

How served on person.

2. An acknowledgment on the back of the summons, or the voluntary appearance of a defendant, is equivalent to service.

§ 15. A summons against a corporation may be served upon the president, mayor, chairman of the board of directors or trustees, or other chief officer ; or, if its chief officer is not found in the county, upon its cashier, treasurer, secretary, clerk, or managing agent ; or, if none of the aforesaid officers can be found, by a copy left at the office, or usual place of business of such corporation, with the person having charge thereof.

On corporations.

§ 16. Where the defendant is an incorporated insurance company, and the action is brought in a county, in which there is an agency thereof, the service may be upon the chief officer of such agency.

§ 17. Where the defendant is a foreign corporation, having a managing agent in this State, the service may be upon such agent.

§ 18. When the defendant is a minor under the age of fourteen years, the service must be upon him and upon his guardian, or father ; or, if neither of these can be found, then upon his mother, or the person having the care or control of the infant, or with whom he lives. If neither of these can be found, or, if the minor be more than fourteen years of age, service on him alone, shall be sufficient. The manner of service may be the same as in the case of adults.

On minors.

APPEARANCE.

§ 19. The parties are entitled to one hour in which to appear after the time mentioned in the summons for appearance, but are not bound to remain longer than that time, unless both parties have appeared, and the justice being present, is engaged in the trial of another cause. In such case, the justice may postpone the time of appearance until the close of such trial.

ARREST BEFORE JUDGMENT.

§ 20. An order for the arrest of the defendant in a civil action, shall be made by the justice of the peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to ad-

When order of arrest issued.

Affidavit shall establish that defendant has:

minister oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars :

Begun to remove his property with fraudulent intent.

1. That the defendant has removed or begun to remove any of his property out of the county with intent to defraud his creditors :

Or convert it into money with such intent.

2. That the defendant has begun to convert his property or any part thereof into money for the purpose of defrauding his creditors :

Fraudulently concealed effects.

3. That he has property or rights in action which he fraudulently conceals :

Made fraudulent assignment.

4. That he has assigned, removed or disposed of, or has begun to assign, remove or dispose of his property or any part thereof, with intent to defraud his creditors :

Fraudulently contracted the debt.

5. That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought.

The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

§ 21. The order of arrest may, be made to accompany the summons, or at any time afterwards before judgment.

Undertaking of plaintiff.

§ 22. The order of arrest shall not be issued by a justice of the peace until there has been executed by the plaintiff, if a resident freeholder of the township where suit is brought, otherwise by one or more sufficient sureties of the plaintiff, a written undertaking to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the arrest, if the order be wrongfully obtained, not exceeding double the amount of the plaintiff's claim, stated in the affidavit.

Order to whom delivered and what to contain.

§ 23. The order of arrest shall be addressed and delivered, with a copy of the affidavit, to a constable of the proper township ; it shall state the names of the parties, the amount of the plaintiff's claim specified in the affidavit, be signed by the justice of the peace issuing it, and shall require the constable to arrest the defendant and bring him forthwith before said justice.

The arrest.

§ 24. The officer receiving said order, shall execute the same by forthwith arresting the defendant and delivering to him a copy thereof, and of the affidavit ; and the defendant, so arrested, unless the claim of the plaintiff specified in the affidavit and costs of suit are paid, or unless discharged from custody by order of the plaintiff, shall be taken by such constable forthwith before the justice of the peace by whom said order of arrest was issued, and kept in custody until discharged by law.

When return made trial to proceed unless continued.

§ 25. Upon the return of said order of arrest, executed in pursuance of the preceding section, the trial of said cause shall proceed, unless, for good cause shown, upon the appli-

cation of either party, or at the instance of the justice himself, the same shall be continued as is provided for in other cases, before justices of the peace. And when the trial of said cause is continued for any period, the defendant, upon executing, with one or more sufficient sureties, a written undertaking, to the effect that he will pay the amount of the judgment that may be rendered against him upon the final determination of the action, or upon depositing in the hands of the justice of the peace the amount of money mentioned in the order of arrest, and the probable amount of costs of suit, shall be forthwith discharged from custody: *Provided, however*, that in no case shall the defendant be detained in the custody of the officer, when said continuance has been for a period of more than forty-eight hours, unless said continuance has been made at the instance, or with the consent of the defendant himself.

How defendant
discharged
when cause
continued.

ARREST AFTER JUDGMENT.

§ 26. On the judgment against the defendant in any civil suit before a justice of the peace, when the defendant is in the custody of the officer as hereinbefore provided for, or if after judgment against him, there is filed in the office of such justice an affidavit of the plaintiff, his authorized agent or attorney, made before any person competent to administer an oath, stating the amount of said judgment remaining unpaid, and establishing one or more of the particulars mentioned in section twenty, said justice of the peace shall, unless otherwise ordered by the plaintiff, issue an execution and accompany the same with an order for the arrest of the defendant.

Issuing of order
of arrest after
judgment.

The affidavit.

§ 27. Said order of arrest shall be addressed and delivered, with a copy of the affidavit, to the constable having said execution, and shall state the names of the parties, be signed by the justice issuing it, and state the amount of the judgment and costs unpaid, and shall require the officer, in case the same shall not be paid, or an amount of property of the defendant whereon to levy execution, sufficient to satisfy the same cannot be found in his township, to arrest the defendant, if not already in the custody of the officer, and deliver him to the sheriff of the proper county, to be committed by him to the jail of the county, and kept in custody until discharged by law: *Provided, however*, that no such order of arrest shall be issued until the undertaking required by the twenty-second section of this act shall have been executed.

Order, to whom
delivered; what
it shall state
and its com-
mand.

ATTACHMENT.

§ 28. The plaintiff shall have an order of attachment against the property of the defendant in a civil action before a justice of the peace for the recovery of money, before or

Affidavit to be
filed before at-
tachment is-
sued.

after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim; that it is just; the amount which the affiant believes the plaintiff ought to recover; and the existence of some one or more of the following particulars:

What it shall state.

1. That the defendant or one of the several defendants, is a foreign corporation, or is a non-resident of the county; or,
2. Has absconded with intent to defraud his creditors; or
3. Has left the county of his residence to avoid the service of a summons; or,
4. So conceals himself that a summons cannot be served upon him; or,
5. Is about to remove his property or a part thereof out of the county, with the intent to defraud his creditors; or,
6. Is about to convert his property or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or,
7. Has property or rights in action which he conceals; or,
8. Has assigned, removed or disposed of, or is about to dispose of his property or a part thereof, with intent to defraud his creditors; or,

9. Fraudulently contracted the debt or incurred the obligation for which suit is about to be, or has been brought. When the defendant is a foreign corporation or a non-resident of the county, the attachment shall not be granted unless the claim is for a debt or demand arising upon contract, judgment or decree.

When undertaking must be given, and its condition.

§ 29. When the ground of attachment is, that the defendant is a foreign corporation, or a non-resident of the county, the order of attachment may be issued without an undertaking, but in all other cases, the order of attachment shall not be issued by the justice until there has been executed in his office by one or more sufficient sureties of the plaintiff to be approved by the justice, an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

The issuing, delivery and command of the attachment.

§ 30. The order of attachment may be made to accompany the summons or at any time afterwards, before judgment; it shall be addressed and delivered to any constable of the proper township, and shall require him to attach the goods, chattels, stocks, or interests in stocks, rights, credits, moneys and effects of the defendant in his county, not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

§ 31. The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be executed and returned forthwith.

Return day.

§ 32. When there are several orders of attachment against the same defendant, in the hands of the same officer, they shall be executed in the order in which they were received by said officer; he shall go to the place where the defendant's property may be found, and there, in the presence of two credible persons, declare that by virtue of said order, he attaches said property at the suit of such plaintiff; and the officer, with two householders of the county, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all property attached, which shall be signed by the officer and said householders, and returned with the order; when the property can be come at, he shall take the same into his custody, and hold it subject to the order of the justice.

Attachment to be executed in the order received; and manner of service.

§ 33. The constable shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the constable, an undertaking of the plaintiff, with one or more sufficient sureties resident in the county, to the effect that the parties to the same are bound in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in the action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted to the person or persons so bound.

How person holding the property may retain possession.

§ 34. Different attachments of the same property may be made, and one inventory and appraisement shall be sufficient. The lien of the attachments shall be in the order in which they are served, and the subsequent attachments shall be served on the property as in the hands of the officer, and subject to the prior attachments. The justice who issued the attachment having the priority of lien, shall determine all questions as to the priority of liens on the property attached.

Lien.

§ 35. If the order of attachment is made to accompany the summons, a copy thereof and the summons shall be served upon the defendant in the usual manner for the service of a summons, if the same can be done within the county, and when any property of the defendant has been taken under the order of attachment, and it shall appear that the summons issued in the action has not been, and cannot be served on the defendant in the county in the manner prescribed by law, the justice of the peace shall continue the cause for a period not less than forty nor more than sixty days. Whereupon the plaintiff shall proceed for three con-

How order served, when accompanied with summons, on defendant within or out of the county.

secutive weeks to publish in some newspaper printed in the county, or if none be printed therein, then in some newspaper of general circulation in said county, a notice stating the names of the parties, the time when, by what justice of the peace, and for what sum said order was issued, and shall make proof of such publication to the justice, and thereupon said action shall be proceeded with the same as if said summons had been duly served.

When property
to be sold im-
mediately.

§ 36. When the cause is continued as provided for in the preceding section, and it shall appear that any of the property taken under the attachment is live stock, or is of a perishable nature, the justice may issue his order directing the officer having the custody thereof, to dispose of the same as upon execution, and the moneys realized therefrom shall be paid over to the justice and applied as other money realized from the sale of the property attached is applied.

The garnishee,
how served.

§ 37. When the plaintiff, his agent or attorney, shall make oath in writing, that he has good reason to, and does believe, that any person or corporation, to be named and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee, a copy of the order of attachment, with a written notice, that he appear before the Justice, at the return of the order of attachment, and answer, as provided in section thirty-nine.

§ 38. The copy of the order and notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president, or other head of the same, or the secretary, cashier or managing agent thereof.

His appearance.

§ 39. The garnishee shall appear before the justice in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description and credits of the defendant, in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not; and in the case of a corporation, any stock therein held by, or for the benefit of, the defendant, at or after the service of notice.

And return.

§ 40. A garnishee may pay the money owing to the defendant by him, to the constable having the order of attachment, or into the court. He shall be discharged from liability to the defendant, for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

§ 41. If the garnishee do not appear and answer, as required by section thirty-nine, the Justice may proceed against him by attachment as for a contempt.

Penalty for failing to answer.

§ 42. If the garnishee appear and answer, and it is discovered on his examination, that, at or after the service of the order of attachment and notice upon him, he was possessed of any property of the defendant, or was indebted to him, the Justice may order the delivery of such property and the payment of the amount owing by the garnishee, into the court; or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff by one or more sufficient sureties, to the effect, that the amount shall be paid, or the property forthcoming, as the court may direct.

Disposal of property attached.

§ 43. If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff; or if he fail to comply with the order of the justice to deliver the property and pay the money owing, into court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action, in his own name, as in other cases, and thereupon such proceedings may be had as in other actions, and judgment may be rendered in favor of the plaintiff, for the amount of the property and credits of every kind of the defendant in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases. When the claims of the plaintiffs in attachment are satisfied, the defendant in attachment may, on motion, be substituted as the plaintiff in the judgment.

Action against garnishee.

§ 44. Final judgment shall not be rendered against the garnishee, until the action against the defendant in attachment has been determined; and if in such action judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys and credits of the defendant in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged, and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

When defendant may be made plaintiff.

When judgment rendered against garnishee.

§ 45. If judgment be rendered in the action for the defendant, the attachment shall be discharged and the property attached or its proceeds, shall be returned to him.

When judgment is for defendant.

How judgment
satisfied.

§ 46. If judgment be rendered for the plaintiff, it shall be satisfied as follows : So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, and so much of the personal property, if any, whether held by legal or equitable title, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations, as if the same had been levied on by execution ; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon, for the residue, in all respects as in other cases. Any surplus of the attached property, or its proceeds, shall be returned to the defendant.

When judgment
to stand.

Return of prop-
erty when judg-
ment satisfied.

When property
has passed from
constable, he
may be ordered
again to seize it.

§ 47. The justice may order the constable to repossess himself, for the purpose of selling it, of any of the attached property, which may have passed out of his hands without having been sold or converted into money ; and the constable shall, under such order, have the same power to take the property, as he would have under an order of attachment.

Trial of the
right of proper-
ty.

§ 48. If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Who to deter-
mine priorities.

§ 40. Where several attachments are executed on the same property, or the same persons are made garnishees, the Justice issuing the first order served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

What return
must show.

§ 50. The officer shall return upon every order of attachment what he has done under it. The return must show the property attached, and the time it was attached. When garnishees are served, their names and the time each was served must be stated. The officer shall also return with the order all undertakings given under it.

Effect of ser-
vice.

§ 51. An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys and credits in his hands, or due from him to the defendant from the time he is served with the written notice mentioned in section thirty-seven, but when property is attached in the hands of a consignee or other person having a prior lien, his liens thereon shall not be affected by the attachment.

How attach-
ment may be
discharged.

§ 52. If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the

county, to be approved by the justice in double the amount of the plaintiff's claim be to stated in his affidavit, to the effect, that the defendant shall perform the judgment of the justice, the attachment in such action, shall be discharged, and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

§ 53. If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer, and from the examination of the garnishee, that no property, moneys, rights, credits or effects of the defendant has been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending, shall, at the request of the plaintiff, forthwith certify his proceedings to the court of common pleas of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court in all respects as if the same had originated therein.

Proceedings
where there are
lands.

ARTICLE III.

BILL OF PARTICULARS.

§ 54. In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a set-off, and the evidence on the trial shall be confined to the items set forth in said bills.

To be filed.

Must state.

§ 55. The bills of particulars must state in a plain and direct manner, the facts constituting the cause of action, or the claim to be set-off.

§ 56. The bill of particulars may be amended at any time before the trial or during the trial, or upon appeal to supply any deficiency, or omission in the items, when by such amendment, substantial justice will be promoted. If the amendment be made at the time of, or during the trial, and it be made to appear to the satisfaction of the justice by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The justice may also in his discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required, unless an adjournment is made necessary by the amendment.

May be amended.

ARTICLE IV.

CHANGE OF THE PLACE OF TRIAL.

For what and
how

§ 57. If on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted or is pending for trial, by the affidavit of either of the parties in the case :

Justice a wit-
ness.

1. That such justice is a material witness for either party ; or,

Citizens pre-
judiced.

2. If a jury be demanded by the adverse party, then that he cannot as he verily believes have a fair and impartial trial in such township, on account of the bias or prejudice of the citizens thereof.

When to another
justice ;

§ 58. If the place of the trial be changed, on account of the justice being a material witness in the cause, such cause shall be transferred for trial before some other justice of the peace of the same township, if there be one there legally competent to try such cause ; if there be no such justice within such township, or if such change be granted on account of the bias or prejudice of the citizens of such township against such party, or because the adverse party has an undue advantage over him therein, the case shall be taken to some justice in an adjoining township of the same county.

When to another
township.

Papers &c., to
be transmitted.

§ 59. The justice granting such change, shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein, and have the same jurisdiction, powers, and duties, in all respects whatever, as if such suit had been originally instituted before him.

Costs to be paid.

§ 60. Before any such change shall be allowed, the costs as specified in the next following section, shall be paid by the party applying for such change, or he shall have confessed a judgment therefor before the justice granting the change.

Costs, how
taxed.

§ 61. When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued, and which shall accrue in the cause until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial, and when on the application of the defendant, he shall be taxed with the costs which have accrued for issuing subpoenas for witnesses and service thereof, witness fees, and costs of the justice for transferring the cause to the docket of the other justice.

ARTICLE V.

ADJOURNMENTS.

§ 62. Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party as follows:

By justice.

1. Where a party is in attendance, who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours; and the defendant, if under arrest, to continue in custody.

When not to exceed forty-eight hours.

2. In other cases, not to exceed eight days, unless by consent of parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

Not to exceed eight days, unless—
Trial if not adjourned must—

§ 63. The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days as follows:

Upon application of either party, for what time.

The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot for want of material testimony which he expects to procure, safely proceed to trial.

Party asking must prove, if—

§ 64. An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons upon compliance with the provisions of the preceding section, and upon proof by the oath of the party, or otherwise, to the satisfaction of the justice that such party cannot be ready for trial before the time to which he desires an adjournment for the want of material evidence, describing it, that the delay has not been made necessary by any act, or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

May be had not to exceed ninety days, when and how.

ARTICLE VI.

WITNESS.

§ 65. Any justice may issue subpoenas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

Justice may issue subpoenas—in what cases.

- How served.** § 66. A subpoena may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.
- No fees, when.** § 67. When not served by a constable or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.
- Costs, when not need.** § 68. If any witness having been subpoenaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpoena, unless the adverse party, by confessing the matter or otherwise, render unnecessary the examination of such witness.
- Warrant for, when allowed.** § 69. Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpoena to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material and that he refuses or neglects to attend as such witness in conformity with such subpoena, the justice shall issue a warrant to arrest the delinquent for the purpose of compelling his attendance and punishing his disobedience.
- Punishment on attachment.** § 70. When the person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the State of Ohio against the delinquent, and may be enforced against his person or property.
- Liability of.** § 71. Every person subpoenaed as aforesaid, and neglecting to appear or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpoenaed, for all damages which such party shall sustain by reason of such delinquency.

DEPOSITIONS.

- May be taken and read.** § 72. Depositions may be taken to be read in any cause pending before a justice of the peace, in like manner and subject to the same restrictions and rules of law as in cases pending in the court of common pleas.

You are hereby commanded to summon _____ to appear before me at _____ in said township, on the _____ day of _____, A. D. _____, at _____ o'clock in the _____ noon, to serve as a Juror in a case pending before me, then and there to be tried. And this they shall in nowise omit.

And have you then there this writ with your doings thereon.

Given under my hand this — day of — A. D. —

Justice of the Peace.

- Service of.** § 76. The constable shall serve such summons by a personal service thereof, and return the same endorsed with the names of the persons summoned, at the time appointed for the trial of the cause.
- Jurors liable—when.** § 80. Jurors for neglecting or refusing to attend when properly summoned, or refusing to serve when in attendance, shall be liable to the like penalty, and be proceeded against in the same manner, as witnesses who fail to attend or refuse to testify.
- Constable shall attend court.** § 81. The constable shall be in attendance on the court at and during the progress of the trial, and if from challenge or other cause the pannel shall not be full, he may fill the same in the same manner as is done by the sheriff in the Court of Common Pleas.
- Shall file pannel—when and how.** § 82. When a jury shall be in attendance and the cause shall be continued, the jurors must attend at the time and place appointed for trial without further notice.
- Continuance.** § 83. If either party object to the competency of a juror, the question thereon must be tried in a summary manner by the justice, who may examine the juror or other witness under oath.
- Jurors shall attend without further notice.** § 84. The Justice shall administer an oath or affirmation to the jury, well and truly to try the matter in difference between the parties and a true verdict give according to the evidence.
- If either party object to a juror, question to be tried and how.** § 85. After the jury shall have been sworn they shall sit together and hear proofs and allegations of the parties, and after hearing the same shall be kept together in some convenient place under the charge of a constable until they have agreed upon their verdict, or shall be discharged by the justice.
- Jury to be sworn.** § 86. When the jurors shall have agreed upon their verdict they shall deliver it to the justice publicly, who shall enter it upon his docket.
- Their duty.** § 87. Whenever the justice shall be satisfied that a jury sworn in any cause before him cannot agree in their verdict after having consulted upon it a reasonable time, he may discharge them and continue the cause, and may, if required by either party, proceed to strike another jury as hereinbefore provided; the cause shall be continued to such time as the justice thinks reasonable, unless the parties or their attorneys agree on a longer or shorter time, or unless they may agree that the justice may render judgment on the evidence already heard before him.
- Verdict.**
- Duty of justice when jury cannot agree.**
- May continue cause unless.**

§ 88. It shall be lawful for the justice before whom a cause has been tried, on motion, and being satisfied that the verdict was obtained by fraud, partiality, or undue means, at any time within four days after the entering of judgment, to grant a new trial, and he shall set a time for the new trial, of which the opposite party shall have at least three days notice.

Verdict.

By fraud, new trial granted.

§ 89. The opposite party shall also have a reasonable notice of such motion for a new trial, if the same is not made on the day of the former trial, and in the presence of such party, such notices to be given by the applying party. If the new trial shall be granted, or the jury be unable to agree, the proceedings shall be in all respects as upon the return of the summons.

Notice—how given and by whom.

§ 90. If either the plaintiff or defendant, in their bill of particulars, claim more than twenty dollars, the case may be appealed to the court of common pleas; but if neither party demand a greater sum than twenty dollars, and the case is tried by jury, there shall be no appeal.

Appeal.

No appeal.

§ 91. If on appeal by the plaintiff, he shall not recover a larger sum than twenty dollars, exclusive of interest since the rendition of the judgment before the justice, he shall be adjudged to pay all costs in the court of common pleas, (including a fee of five dollars, to defendant's attorney,) and in case the defendant shall demand a set-off greater than twenty dollars, and he appeal, and do not recover twenty dollars, he shall in like manner pay all costs in the appellate court, including a like fee to plaintiff's attorney.

Plaintiff to pay costs—when.

Defendant to pay costs—when.

§ 92. Upon the verdict being delivered to the justice, and before judgment being rendered thereon, each juror shall be entitled to receive fifty cents at the hands of the successful party, which shall be taxed in the costs against his adversary. When the jury shall be unable to agree upon a verdict, the same compensation shall be paid them by the party calling the jury, and the same shall be taxed in the cost bill against the losing party.

Jurors how paid.

and by whom.

§ 93. In all cases which shall be tried by a jury before a justice of the peace, either party shall have the right to except to the opinion of the justice upon any question of law arising during the trial of the cause; and when either party shall allege such exception, it shall be the duty of the justice to sign and seal a bill, containing such exception, if truly alleged, with the point decided, so that the same may be made part of the record in the cause.

Bill of exceptions,

to be made part of record.

ARBITRATIONS.

§ 94. At any time before trial and judgment rendered, the plaintiff and defendant, consenting thereto, may have

Arbitrators—number and chosen.

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| To be sworn. | the cause submitted to the arbitrament of three disinterested men, who shall be chosen by the parties ; and if the arbitrators be present, they shall hear and determine the cause on oath or affirmation, to be administered by the justice. But if the persons chosen as arbitrators be not present, the justice shall issue a summons for them to attend at the time and place appointed for the trial, which shall be served by any constable, or the parties, as they may agree. The fees of arbitrators shall be the same as that paid to jurors. |
| Justice to issue summons. How served. Fees. | § 95. When the arbitrators shall convene and be qualified, they shall proceed to hear and determine the cause, and make out their award in writing, which shall be valid when signed by any two of them, and return the same to the justice ; who shall thereupon enter such award on his docket, and thereon render judgment and issue execution, as in other cases. |
| Duties of. | § 96. Every judgment rendered on such award, shall conclude the rights of the parties thereto ; unless it shall be made to appear to the justice of the peace who rendered such judgment, and within ten days from the rendition of the same, or to the court of common pleas, on appeal, that such award was obtained by fraud, corruption, or other undue means. |
| Award. | § 97. Whenever satisfactory proof shall be adduced before such justice, within the period aforesaid, that such award was obtained by fraud, corruption, or other undue means, it shall be competent for such justice to set aside such award and his judgment thereon rendered, and thereupon proceed to such final trial and judgment, as if such award had never been made. |
| Execution. | § 98. But no appeal shall be allowed to the court of common pleas, from a judgment of a justice of the peace rendered on an award, unless the party praying such appeal shall file with such justice an affidavit, therein stating that he or she does verily believe that such award was obtained by fraud, corruption, or other undue means. |
| Judgment to be conclusive unless. | § 99. And if on appeal from the judgment of a justice rendered on any such award, the court of common pleas shall be satisfied that the award was obtained by fraud, corruption, or other undue means, such court shall set aside the award, and proceed to hear and determine the cause on the merits, as in other cases of appeal. |
| When justice to set aside. | § 100. But if the said court shall be of opinion that the award was not obtained by fraud, corruption, or other undue means, they shall render judgment thereon, and for the costs of suit, and award execution as in other cases. |
| No appeal unless an affidavit be filed. | |
| When court may set aside award and proceed to determine cause. | |

TRIAL OF THE RIGHT OF PROPERTY LEVIED ON OR ATTACHED.

§ 101. When a constable shall levy on or attach property, claimed by any person or persons, other than the party against whom the execution or attachment issued, the claimant or claimants shall give three days notice, in writing, to the plaintiff or his agent, or if not found within the county, then such notice shall be served by leaving a copy thereof at his usual place of abode in such county, of the time and place of the trial of the right to such property, which trial shall be had before some justice of the township at least one day prior to the time appointed for the sale of such property.

The notice.

Its service.

Where trial had.

The trial.

§ 102. If on the trial the justice shall be satisfied from the proof that the property, or any part thereof, belongs to the claimant or claimants, such justice shall render judgment against the party in whose favor such execution or attachment issued for the costs, and issue execution therefor, and shall, moreover, give a written order to the constable who levied on, or who may be charged with the duty of selling such property, directing him to restore the same, or so much thereof as may have been found to belong to such claimant or claimants.

§ 103. But if the claimant or claimants fail to establish his or their right to such property or to any part thereof, the justice shall render judgment against such claimant or claimants for the costs that have accrued on account of such trial, and issue execution therefor, and the constable shall not be liable to the claimant or claimants for the property so taken.

ARTICLE VIII.

JUDGMENTS.

§ 104. Judgment that the action be dismissed without prejudice to a new action may be entered with costs, in the following cases:

Non suit.

1. When the plaintiff voluntarily dismisses the action before it is finally submitted.

2. When he fails to appear at the time specified in the summons, or upon adjournment, or within one hour thereafter.

3. When it is objected at the trial and appears by the evidence that the action is brought in the wrong township.

§ 105. If the plaintiff fail to appear at the return day of the summons, and his bill of particulars be not filed and ev-

Trial in absence of a party.

idence before the justice, the action must be dismissed. If the defendant fail to appear at the return day of the summons, or if either party fail to attend at the time to which a trial has been adjourned, or fail to make the necessary bill of particulars, or fail in the proof on his part, the cause may proceed at the request of the adverse party, and judgment must be given in conformity with the bills of particulars and proofs.

Setting aside judgment in such case, and how.

§ 106. When judgment shall have been rendered against a defendant in his absence, the same may be set aside upon the following conditions :

1. That his motion be made within ten days after such judgment was entered.

2. That he pay or confess judgment for the costs awarded against him.

3. That he notify in writing the opposite party, his agent or attorney, or cause it to be done, of the opening of such judgment and of the time and place of trial at least five days before the time, if the party reside in the county, and if he be not a resident of the county by leaving a written notice thereof at the office of the justice ten days before the trial.

When judgment must be rendered.

§ 107. Upon a verdict the justice must immediately render judgment accordingly. When the trial is by the justice, judgment must [be] entered immediately after the close of the trial if the defendant has been arrested or his property attached ; in other cases it must be entered either at the close of the trial, or if the justice then desire further time to consider, on or by the fourth day thereafter, both days inclusive.

When sum due exceeds jurisdiction.

§ 108. When the amount due to either party exceeds the sum for which the justice is authorized to enter judgment, such party may remit the excess and judgment may be entered for the residue. A defendant need not remit such excess, and may withhold setting the same off, and a recovery for the amount set off and allowed, or any part thereof, shall not be a bar to his subsequent action for the amount withheld.

Offer in writing to permit judgment to be taken.

§ 109. If the defendant any time before trial offer in writing to allow judgment to be taken against him for a specified sum, the plaintiff may immediately have judgment therefor with the costs then accrued. But if he do not accept such offer before the trial, and fail to recover in the action a sum equal to the offer, he cannot recover costs accrued after the offer ; but costs must be adjudged against him. But the offer and failure to accept it cannot be given in evidence to affect the recovery otherwise than as to costs as above provided.

When defendant is subject to arrest.

§ 110. Where judgment is rendered in a case where the defendant is subject to arrest and imprisonment, it must be so stated in the judgment, and entered in his docket.

ARTICLE IX.

APPEALS.

§ 111. In all cases not otherwise specially provided for by law, either party may appeal from the final judgment of any justice of the peace to the court of common pleas of the county, where the judgment was rendered.

§ 112. The party appealing shall, within ten days from the rendition of the judgment, enter into an undertaking to the adverse party with at least one good and sufficient surety to be approved of by such justice, in a sum not less than fifty dollars in any case, nor less than double the amount of the judgment and costs, conditioned :

The undertaking.

Its amount and condition.

1. That the appellant will prosecute his appeal to effect, and without unnecessary delay :

2. That if judgment be adjudged against him on the appeal, he will satisfy such judgment and costs.

Such undertaking need not be signed by the appellant.

Appellant need not sign.

Transcript.

§ 113. And the said justice shall make out a certified transcript of his proceedings, include the undertaking taken for such appeal, and shall, on demand, deliver the same to the appellant, or his agent, who shall deliver the same to the clerk of the court to which such appeal may be taken, on or before the second day of the term thereof, next following such appeal ; and such justice shall also deliver or transmit the bill or bills of particulars, the depositions, and all other original papers, if any, used on the trial before him, to such clerk, on or before the said second day of such term ; and all further proceedings before the justice of the peace, in that case, shall cease and be stayed, from the time of entering into such undertaking.

To be delivered to clerk.

Also bills of particulars.

§ 114. The clerk, on receiving such transcript, and other papers as aforesaid, shall file the same, and docket the appeal.

And filed.

§ 115. The plaintiff in the court below shall be plaintiff in the court of common pleas ; and the parties shall proceed, in all respects, in the same manner as though the action had been originally instituted in the said court.

The parties in common pleas.

§ 116. If the appellant shall fail to deliver the transcript, and other papers, if any, to the clerk, and have his appeal docketed as aforesaid, on or before the second day of the term of the said court next after such appeal, the appellee may, at the same term of said court, file a transcript of the proceedings and judgment of such justice, and the said cause shall, on motion of the appellee, be docketed ; and the court is authorized and required, on his application, either to enter up a judgment in his favor, similar to

Failure to deliver transcript ; its effect.

that entered by the justice of the peace, and for all the costs that have accrued in the court, and award execution thereon; or such court may, with the consent of such appellee, dismiss the appeal, at the cost of the appellant, and remand the cause to the justice of the peace, to be thereafter proceeded in as if no appeal had been taken.

Failure to prosecute appeal.

§ 117. If the plaintiff, in the action before the justice, shall appeal from any judgment rendered against such plaintiff, and after having filed his transcript and caused such appeal to be docketed, according to the provisions of this act, shall fail to file a petition, or otherwise neglect to prosecute the same to final judgment, so that such plaintiff shall become nonsuit, it shall be the duty of the court to render judgment against such appellant, for the amount of the judgment rendered against him by the justice of the peace, together with interest, accrued thereon, and for costs of suit, and to award execution therefor, as in other cases.

Parties failing to perfect appeal; its effect.

§ 118. If both parties fail to enter such appeal within the time limited as aforesaid, the justice, on receiving a certificate from the clerk of the court, stating that the appeal was not entered, or being entered, was dismissed as aforesaid, shall thereupon issue execution upon the judgment, in the same manner as if such appeal had never been taken.

Effect of less recovery than in court below.

§ 119. If any person appealing from a judgment rendered in his favor, shall not recover a greater sum than the amount for which judgment was rendered, besides costs and the interest accruing thereon, every such appellant shall pay the costs of such appeal.

Liability of surety.

§ 120. When any appeal shall be dismissed, or when judgment shall be entered in the court of common pleas against the appellant, the surety in the undertaking shall be liable to the appellee for the whole amount of the debt, costs and damages, recovered against the appellant.

Cause of quashing must be stated.

§ 121. When an appeal taken to the court of common pleas shall there be quashed, by reason of irregularity in taking or consummating the same, the cause for quashing shall be stated in the order of the court, and a transcript of such order shall be lodged with such justice, who shall thereupon proceed to issue execution, in the same manner as if no appeal had been taken.

Change of undertaking.

§ 122. In proceedings on appeal, when the surety in the undertaking shall be insufficient, or such undertaking may be insufficient, in form or amount, it shall be lawful for the court, on motion, to order a change or renewal of such undertaking, and direct that the same be certified to the justice from whose judgment the appeal was taken, or that it be recorded in said court.

No appeal allowed in certain cases.

§ 123. Appeals in the following cases shall not be allowed:

1. On judgments rendered on confession :
2. In jury trials where neither party claim in their bill of particulars a sum exceeding twenty dollars :
3. In the action for the forcible entry and detention, or forcible detention of real property.
4. In trials of the right of property, under the statutes, either levied upon by execution or attached.

§ 124. When the term of office of a justice shall expire between the date of the judgment and the time limited for appeal, such justice may take the undertaking for appeal, at any time before he has delivered his docket to his successor, and give the appealing party a transcript. After the delivery, of the docket, the undertaking shall be given to his successor, and it shall be his duty to give the transcript and do and perform all things required of his predecessor.

When Justice's
commission ex-
pires before ap-
peal taken.

ARTICLE X.

OF THE ACTION FOR THE FORCIBLE ENTRY AND DETENTION, OR FORCIBLE DETENTION ONLY OF PROPERTY.

§ 125. Any justice, within his proper county, shall have power to enquire in the manner hereinafter directed, as well against those who make unlawful and forcible entry into lands and tenements, and detain the same, as against those who having a lawful and peaceable entry into lands or tenements unlawfully, and by force hold the same ; and if it be found upon such enquiry that an unlawful and forcible entry has been made, and that the same lands or tenements are held by force, or that the same, after a lawful entry, are held unlawfully, then said justice shall cause the party complaining, to have restitution thereof.

Jurisdiction of
Justice.

§ 126. Proceedings under this Article may be had in all cases against tenants holding over their terms; in sales of real estate, on executions, orders, or other judicial process, when the judgment debtor was in possession at the time of the rendition of the judgment or decree, by virtue of which such sale was made ; in sales by executors, administrators, guardians, and on partition, where any of the parties to the petition were in possession at the commencement of the suit, after such sales, so made on execution, or otherwise shall have been examined by the proper court, and the same by said court adjudged legal ; and in cases where the defendant is a settler, or occupier of lands or tenements, without color of title, and to which the complainant has the right of possession ; this section not to be construed as limiting the provisions of the first section of this article.

§ 127. Judgments either before the justice, or in the court of common pleas, under this article, shall not be a bar to any after action brought by either party.

Action not a
to a second.

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| Notice. | § 128. It shall be the duty of the party desiring to commence an action under this article, to notify the adverse party to leave the premises, for the possession of which the action is about to be brought, which notice shall be served at least three days before commencing the action, by leaving a written copy with the defendant or at his usual place of abode, if he cannot be found. |
| Its service. | |
| Complaint to be filed before summons issues. | § 129. The summons shall not issue herein until the plaintiff shall have filed his complaint in writing with the justice, which shall particularly describe the premises so entered upon or detained, and shall set forth either an unlawful and forcible entry and detention, or an unlawful and forcible detention after a peaceable or lawful entry of the described premises. The complaint shall be copied into and made a part of the record. |
| The complaint. | |
| The summons. | § 130. The summons shall be issued and directed, shall state the cause of complaint, and the time and place of trial, shall be served and returned as in other cases; such service shall be three days before the day of trial appointed by the justice. |
| When defendant fails to appear. | § 131. If the defendant does not appear in accordance with the requisitions of the summons, and it shall have been properly served, the justice shall try the cause as though he was present. |
| Continuance, and undertaking therefor. | § 132. No continuance shall be granted for a longer period than eight days, unless the defendant applying therefor, shall give an undertaking to the adverse party, with good and sufficient surety to be approved by the justice, conditioned for the payment of the rent that may accrue, if judgment be rendered against the defendant. |
| When Justice to try cause. | § 133. If the suit be not continued, place of trial changed, or neither party demand a jury upon the return day of the summons, the justice shall try the cause; and if, after hearing the evidence, he shall conclude that the complaint is not true, he shall enter judgment against the plaintiff for costs; if he find the complaint true, he shall render a general judgment against the defendant and in favor of the plaintiff for restitution of the premises and costs of suit; if he find the complaint true in part, he shall render a judgment for the restitution of such part only, and the costs shall be taxed as the justice shall deem just and equitable. |
| Judgment. | |
| Trial by jury. | § 134. If a jury be demanded by either party, the proceedings, until the empanneling thereof, shall be in all respects as in other cases. The jury shall be sworn or affirmed, to well and truly try and determine whether the complaint of [naming the plaintiff,] about to be laid before them, is true according to the evidence. If the jury shall find the complaint true, they shall render a general verdict of guilty against the defendant; if not true, then a general verdict of |
| The verdict. | |

not guilty ; if true in part, then a verdict setting forth the facts they find true.

§ 135. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

To be entered
on docket, and
judgment ren-
dered.

§ 136. Exceptions to the opinion of the justice, in cases under this Article, upon questions of law and evidence, may be taken by either party, whether tried by jury or otherwise.

Executions
may be taken.

§ 137. Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable :

The execution.

The State of Ohio, ——— county :

To any Constable of ——— township :

Its form.

Whereas, in a certain action for the forcible entry and detention ; (or the forcible detention, as the case may be,) of the following described premises, to wit : ———, lately tried before me, wherein ——— was plaintiff, and ——— was defendant, ——— judgment was rendered on the ——— day of ———, A. D. ———, that the plaintiff have restitution of said premises ; and also that he recover costs in the sum of ———. You, therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same ; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs, and of this writ make legal service and due return.

Witness my hand this ——— day of ———, A. D. ———.

Justice of the Peace.

§ 138. The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs and make return, as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed, by an allowance of a writ of error, he shall immediately delay all further proceedings upon the execution ; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ with his proceedings and costs taxed thereon.

And service.

When proceed-
ings stayed.

ARTICLE XI.

OF THE REPLEVIN OF PROPERTY.

- Jurisdiction of Justice.** § 139. The plaintiff may recover the possession of specific personal property of less value than one hundred dollars, before a justice of the peace, as herein provided.
- The affidavit.** § 140. An action for this purpose, shall not be brought until there is filed in the office of the justice, an affidavit of the plaintiff, his agent or attorney, showing :
1. A description of the property claimed :
 2. That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property :
 3. That the property is wrongfully detained by the defendant :
 4. That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine or amercement assessed against him, or by virtue of an order of delivery issued under this article, or any other mesne or final process issued against said plaintiff.
- The summons ;
its command.** § 141. Upon such affidavit being made and filed with the justice, he shall issue a summons as in other cases, but in addition commanding the constable immediately to seize and take into his custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff.
- How writ executed.** § 142. The constable shall execute the writ by taking the property therein mentioned. He shall also deliver a copy of the summons to the persons charged with the unlawful detention of property, or leave such copy at his usual place of residence, and shall make return of the time and manner of service, the appraisement of the property and any undertaking taken by him.
- The undertaking.** § 143. The constable shall not deliver to the plaintiff, his agent or attorney, the property so taken until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in at least double the value of the property taken ; but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him.
- Its amount, how fixed.** § 144. For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two responsible persons, whom the constable shall swear truly to assess the value thereof.

§ 145. Whenever the appraised value of the property so taken, shall exceed one hundred dollars, the Justice shall certify the proceedings upon the said writ to the court of common pleas of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries in the clerk's office of said court, the case there to be proceeded in as if such suit had commenced in said court.

Proceedings
when property
exceeds \$100.

§ 146. If the undertaking required by section one hundred and forty-three be not given within twenty-four hours from the taking of the property under said order, the officer shall return the property to the defendant. And if the officer deliver any property so taken, to the plaintiff, his agent, or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

Effect of not
giving underta-
king.

§ 147. If the property have been delivered to the plaintiff, and judgment be rendered against him, or of he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant, or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied the said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same, at such time, then, and in either case, they shall assess such damages for the defendant, as are right and proper, for which, with costs of suit, the justice shall render judgment for the defendant.

Trial of right of
property.

Finding of the
jury.

§ 148. In all cases, when the property has been delivered to the plaintiff where the jury shall find for the defendant, they shall also find, whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages, as they think right and proper for the defendant, for which, with costs of suit, the court shall render judgment for the defendant.

§ 149. In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

§ 150. When the property claimed, has not been taken, or has been returned to the defendant, for want of the undertaking required by section one hundred and forty-three, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking

When action
may proceed
for damages.

required by said section, the plaintiff shall pay all costs made by taking the same.

Right to break
and enter build-
ings.

§ 151. The constable in executing the writ, may break open any building, or enclosure, in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building, or enclosure, and the delivery of the property, after having demanded the same.

Execution to be
returned before
suit under sec-
tion 143.

§ 152. No suit shall be instituted on the undertaking given under section one hundred and forty-three before an execution issued on a judgment in favor of the defendant in the action, shall have been returned, that sufficient property, whereon to levy and make the amount of such judgment, cannot be found in the county.

Penalty for is-
suing writ with-
out affidavit.

§ 153. If any justice shall issue a writ to replevin property, as is provided by this article, without the affidavit being made and filed in his office, as is provided in section one hundred and forty, the same shall be set aside at his costs, and he shall be liable in damages to the party injured.

ARTICLE XII.

EXECUTION—RETURN—STAY OF EXECUTION—NOTICE OF SALE—DELIVERY—UNDERTAKING.

When execu-
tion issued.

§ 154. Execution for the enforcement of a judgment before a justice of the peace (except when it has been taken to the common pleas on error, or appeal, or docketed therein, or during the time it may be stayed, as provided by this act,) may issue by the justice before whom the judgment was rendered, or by his successor in office, on the application of the party entitled thereto, at any time within five years from the entry of the judgment, or the date of the last execution issued thereon.

When justice to
issue execution
without de-
mand.

§ 155. It shall be the duty of the justice, if the case be not appealed, taken up on error, docketed in the common pleas, or bail has not been given for the stay of execution at the expiration of ten days from the entry of the judgment, to issue execution without a demand, and proceed to collect the judgment, unless otherwise directed by the judgment creditor.

Stay of execu-
tion.

§ 156. Any person against whom judgment may be rendered under the provisions of this act, except as hereinafter excepted, may have stay of execution for the several periods hereinafter mentioned, by entering into an undertaking to

the adverse party, within ten days after the rendition of such judgment, with good and sufficient surety, resident of the county, as the justice shall approve, conditioned for the payment of the amount of such judgment, interest and costs, and costs that may accrue; which undertaking shall be entered on the docket of the justice, and be signed by the surety.

How granted.

§ 157. The stay of execution hereby authorized, shall be graduated as follows, namely:

Time.

First: On any judgment for five dollars and under, the stay shall be for sixty days.

Second: On any judgment exceeding five dollars, and under twenty dollars, the stay shall be for ninety days.

Third: On any judgment for twenty dollars, and under fifty dollars, the stay shall be for one hundred and fifty days.

Fourth: On any judgment for fifty dollars or upwards, the stay shall be for two hundred and forty days.

Fifth: Where judgment is obtained against a surety, and he takes a stay thereon, and he obtains judgment against the principal, stay of execution must be allowed on the judgment against the principal only so long that the stay will expire one month before that allowed to the surety on the judgment against him.

§ 158. No stay of execution on judgments rendered in the following cases, shall be allowed:

No stay in certain cases.

1. On judgments rendered against justices of the peace for refusing to pay over money by them collected, or received in their official capacity.

2. On judgments against justices for not reporting annually to the auditor all fines, as required by law.

3. On any judgment rendered against a constable for failing to make return, making a false return, or refusing to pay over money collected in his official capacity.

4. On judgments against bail for the stay of execution.

5. Where judgment is rendered in favor of bail who have been compelled by judgment to pay money on account of their principal.

6. On judgments obtained by constables on undertakings executed to them for the delivery of property.

§ 159. If the execution issued before the undertaking for stay, or that required in case of appeal be given, and such undertaking be given afterwards, and within the time allowed, the justice shall recall the execution.

When execution recalled.

§ 160. Where any person who has become bail for stay of execution, shall remove before the expiration of such stay, into any other county or State, the justice shall, on demand, issue execution against the goods and chattels of the defendant, or other party against whom the original judgment was rendered, to be proceeded with as in other cases.

When bail removes.

§ 161. When any surety for the stay of execution shall become apprehensive that by delaying the execution until

Bail may obtain execution before expiration of stay.

the expiration of the full time of such stay, he or she may be compelled to pay the judgment, it shall be lawful for such surety to make and file affidavit of that fact, before the justice on whose docket the judgment is entered; whereupon, such justice shall issue execution against the judgment debtor, which shall be proceeded in as in other cases: *Provided*, such bail shall not thereby be discharged from liability, but may be proceeded against after the expiration of the term of stay, in the same manner as if execution had not issued as aforesaid.

Further stay.

§ 162. If the judgment debtor shall, within ten days after levying such execution, enter into a farther undertaking for the stay of execution, during so much of the first stay as remains then unexpired, and shall pay the costs of the execution issued against him, as aforesaid, it shall be the duty of the justice to take such further undertaking, and recall the execution; and the person who last became surety, shall first be proceeded against, until it shall appear, by the return of the constable, that he or she has no goods and chattels whereon to levy, before proceedings shall be instituted on the undertaking first given.

Judgment to stand for benefit of bail.

§ 163. When any judgment shall be obtained against any person who shall have entered himself bail on the docket of any justice of the peace, agreeably to the provisions of this act, the original judgment shall remain good and valid in law, for the use of such bail; who, at any time thereafter, may sue out execution, on such judgment, against the goods and chattels of the defendant, for the use of such bail, which shall be so endorsed by the justice: and such bail shall also be entitled to a transcript of such judgment, for his own use; which shall have the same force and effect as transcripts in other cases.

Who may obtain execution.

And transcript.

Demand for further surety and effect of not giving.

§ 164. At any time before the stay shall expire, if the justice taking the surety, or his successor in office, shall become satisfied that the surety is insufficient, it shall be his duty to cause written notice thereof to be given to the defendant, or if he be absent, that the same be left at his residence, requiring him to give additional surety. If such defendant shall not have given such additional surety, on or by the third day after the giving of such notice, such fact shall be entered on the docket, and he shall immediately issue execution against the defendant for the collection of the judgment. If within ten days after the issuing of such execution, surety to the satisfaction of the justice be given, the execution shall be recalled and stayed until the expiration of the original stay.

Execution, to whom directed.

§ 165. The execution must be directed to a constable of the county, and subscribed by the justice by whom the judgment was rendered, or by his successor in office, and must bear date the day of its delivery to the officer, to be execu-

ted. It must intelligibly refer to the judgment by stating the names of the parties and the name of the justice before whom, and of the county and township where, and the time when it was rendered, the amount of the judgment, and if less than the whole is due, the true amount due thereon. It must require the constable substantially as follows:

What it must state, and what require.

1. If it be a case where the defendant cannot be arrested, it must direct the officer to collect the amount of the judgment out of the personal property of the debtor, and pay the same to the party entitled thereto.

Where defendant cannot be arrested.

2. If it be a case where any of the judgment debtors are certified on the docket as surety, it shall command that the money be made of the personal property of the principal debtor, and for want thereof, of the personal property of the surety. In such cases, the personal property of the principal subject to execution within the jurisdiction shall be exhausted before any of the property of the bail shall be taken in execution.

Where some of the judgment debtors are surety.

3. If it be a case where the defendant may be arrested, in addition to the foregoing, it must direct the officer, if sufficient property of the defendant subject to the execution cannot be found to satisfy the judgment, that he arrest the debtor and commit him to the jail of the county until he pay the judgment, or be discharged according to law, unless the execution be accompanied by an order of arrest, as provided in sections twenty-six and twenty-seven.

Where defendant may be arrested.

4. It must in all cases direct the officer to make return of the execution and a certificate thereon, showing the manner in which he has executed the same, in thirty days from the time of his receipt thereof.

In all cases.

§ 166. Upon an execution on a judgment against joint debtors, upon one or more of whom the summons was not served, the execution must contain a direction to collect the amount out of the joint property of all the defendants, or the separate property of the persons upon whom the summons was served, to be specified by name. If such judgment be also such that the defendants are subject to arrest thereon, the justice must further specify the names of those defendants served with the summons, who may be arrested for want of property.

Against joint debtors, some of whom not served.

§ 167. A constable may, at his peril, omit to arrest a debtor, or after arrest, suffer him to go at large before the return day, subject only to his liability for an escape, or for omitting to arrest if he fail to have either the money or the person of the debtor in custody at the expiration of the thirty days.

Constable may omit to arrest.

§ 168. It shall be lawful for the sheriff or jailor, receiving any person imprisoned on execution issued in any civil proceeding at any time when there is no money in his hands to pay for the sustenance of such prisoner, to discharge him

When sheriff may discharge prisoner.

him from prison. The jailor may, however, detain such prisoner, the adverse party being liable for such sustenance.

How long debt-
or may be im-
prisoned.

§ 169. The debtor committed as herein provided, may be held in prison ten days, and if he be a person without a family, for which he provides, one day in addition for every dollar over ten due on the execution, or if he have a family for which he provides, one day in addition for every two dollars over twenty due on the execution.

Affidavit of the
prisoner.

§ 170. The affidavit of an imprisoned debtor, that he has a family for which he provides, specifying by name, one or more persons, members of such family, and the place of their residence, is sufficient evidence thereof to authorize his discharge by the jailor.

Liability of con-
stable.

§ 171. A constable is liable to the party in whose favor an execution issued to him for the amount thereof, in the following cases :

1. Where he suffers thirty days to elapse without making a true return thereof to the justice, and paying to him, or to the party entitled, the money collected thereon by him.

2. Where he wilfully and carelessly omits to levy on property within thirty days, or if the defendant be liable to be imprisoned, then to arrest and commit him to the jail of the county within thirty days.

When execu-
tion returned
unsatisfied.

§ 172. When an execution shall be returned unsatisfied for the want of goods and chattels, the justice shall, unless otherwise directed by the party for whom the execution issued, commence an action on the undertaking for the stay of execution, and so soon as judgment is obtained thereon shall issue execution, and if such execution be returned unsatisfied in whole or in part for want of goods and chattels of the bail whereon to levy, then the plaintiff may demand and have execution on the original judgment for the amount remaining due.

When defendant
shall die.

§ 173. Where bail is given for the stay of execution, and the defendant against whom the judgment was rendered shall die before the same is satisfied, the creditor may proceed against the surety in the undertaking in like manner as if execution had been issued against the defendant, and returned not satisfied for want of goods and chattels whereon to levy.

SALE ON EXECUTION.

Notice of sale.

§ 174. All property taken in execution under the provisions of this act, shall be advertised for sale, at four of the most public places within the township where such property was seized, at least ten days previous to the time appointed for such sale, which sale shall be held between the hours of ten o'clock, A. M., and four o'clock, P. M., at the house, or on the premises, where such property was taken, or at one of the most public places within the township.

§ 175. It shall not be lawful for any justice of the peace who-issued the execution, nor for the constable holding the execution, to purchase either directly or indirectly, any property sold on such execution. And any justice or constable who shall offend against the provisions of this section, shall forfeit and pay, for every such offence, any sum not exceeding one hundred dollars, nor less than five dollars; to be recovered by civil action, in the name of the State of Ohio, before any court having jurisdiction thereof, for the use of the township where such offence was committed; and shall moreover be liable to the action of the party injured thereby.

Justice and constable not to purchase property.

§ 176. When any cattle or other live stock shall be taken in execution, it shall be the duty of the justice who issued the execution, or other justice charged with the duty of collecting the judgment, whereon such execution issued, to allow the constable, for keeping of the same, a reasonable compensation; to be taxed and collected as other costs in the suit.

Allowance for keeping stock.

§ 177. When a constable shall levy on and sell any goods and chattels, he shall make out and annex to his return to the execution, in virtue of which such sale was made, a true inventory of all such property, and of each article thereof, and the price at which the same was sold; and for each and every neglect to return a true and accurate schedule or inventory of property sold, or remaining unsold for want of bidders, or other just cause, and if sold, the price at which the same was sold; each and every constable guilty of such neglect, shall forfeit and pay, on conviction thereof, any sum not exceeding one hundred dollars; to be recovered by action in the name of the State of Ohio, for the use of the party injured thereby, to be prosecuted before any court having cognizance thereof.

Inventory of property to be returned by constable.

§ 178. Where a constable shall have levied on any goods and chattels which remain unsold for want of bidders, or other just cause, it shall be his duty to return with the execution a schedule of all such goods and chattels. And the justice shall, unless otherwise directed by the party for whom such execution issued, or his agent, immediately thereafter, issue an order, thereby commanding any constable to whom the same may be directed or delivered, to expose such property to sale; which sale, and the proceedings thereon, shall be the same as if such property had been sold on the original execution.

Order of sale.

§ 179. Any constable having levied on goods and chattels, of which he permits the party against whom the execution issued to retain the possession, is hereby authorized to take such security for his own indemnity as he may require, that such property shall be delivered at the time and place appointed for the sale thereof.

Security for redelivery of property.

Landlord or tenant against whom writ was not issued, not affected.

§ 180. In all cases where any lands may [have] been let, reserving rent in kind, and when the crops or emblements growing or grown thereon, shall be levied on or attached, by virtue of any execution, attachment or other process, against the landlord or tenant, the interest of such landlord or tenant against whom such process was not issued, shall not be affected thereby; but the same may be sold, subject to the claim or interest of the landlord or tenant against whom such process did not issue.

Excuse for failure to serve writ.

§ 181. In cases where the constable shall make it appear to the satisfaction of the justice, that he has been deprived of an opportunity of levying an execution within the time prescribed by this act, or otherwise prevented from making the whole of the money therein required to be made, and shall make return to the justice who issued the same to that effect, such justice is hereby authorized and required to issue further process of execution, for the amount or balance remaining unsatisfied; which shall be served and returned, in all respects, as other executions are under this act.

ARTICLE XIII.

OF CONSTABLES AND THEIR DUTIES.

Term of office.

§ 182. Constables shall be elected for the term of one year, and shall continue in office until their successors are elected and qualified.

Oath.

§ 183. Every constable, before he enters upon the duties of his office, shall take an oath, or affirmation, before a person authorized to administer the same, to support the constitution of the State of Ohio, and faithfully to discharge his duties as constable during his continuance in office, according to the best of his skill and ability.*

Undertaking; its amount and condition.

§ 184. Every constable, within ten days after his election, and before he shall take the oath of office, shall give an undertaking to the State of Ohio, in a sum not exceeding two thousand dollars, nor less than five hundred dollars, with one or more sureties, resident in the proper township, such as the trustees thereof shall approve, conditioned for the safe-keeping, and paying over to the proper person, or authority, all moneys which may be collected or received by him, or which may otherwise come into his hands by virtue of his office, and for the due, honest and faithful discharge, and performance of all and singular, his duties as such constable according to law, during his continuance in office.

Where filed.

§ 185. When such undertaking shall have been given to the satisfaction of the township trustees, the township clerk shall make an entry of the same, and file the same in his office.

* See Art. XV, Sec. 7, Constitution.

§ 186. Whenever a vacancy shall occur in the office of constable in any township by death, removal, resignation, or non-acceptance of the person elected, or where there shall be a failure to elect, the township trustees shall appoint a suitable person to fill such vacancy until the next annual election for constable, and until a successor be elected and qualified.

Vacancy.

Appointment of constable.

§ 187. The constable so appointed, shall take a like oath and give a like undertaking as is required in other cases of constables.

His oath and bond.

§ 188. A justice of the peace may appoint a constable or constables for a special purpose, either in civil or criminal cases, whenever such appointment may become necessary, in the following cases :

When justice may appoint.

1. Where there is no constable in the township :
2. In the case of disability of one of the regular constables in the township :
3. Where the constable therein is a party to the suit :
4. When from the pressure of official business, the constables therein are not enabled to perform the duties required by the office.

The justice making the appointment, shall make a memorandum thereof on his docket, and shall require the person appointed to take an oath, as required in other cases.

Memorandum to be made.

§ 189. The person so appointed by the justice, after taking such oath, shall have the same authority, be subject to the same penalties and entitled to the same fees as other constables.

Powers &c. of appointed constable.

§ 190. Such justice shall stand as surety, and shall be in that character liable, he and his sureties, for any neglect of duty or any illegal proceedings on the part of such constable so by him appointed.

Justice to stand as his surety.

§ 191. All constables shall be ministerial officers in justices' courts, in their respective townships, in civil cases, and in their respective counties, in criminal cases, and civil process may be executed by them throughout the the county, under the restrictions and provisions of the law.

Constables' jurisdiction as ministerial officers.

§ 192. It shall be the duty of every constable to serve and execute all warrants, writs, precepts, executions, and other process to him directed and delivered, and in all respects whatever to do and perform all things pertaining to the office of constable.

Duty in executing process.

§ 193. In discharging their duties, constables may call to their aid the power of the county, or such assistance as may be necessary.

May call aid.

§ 194. It shall be the duty of every constable to make due return of all process to him directed and delivered, at the proper office and on the proper return day thereof; or if the judgment be docketed in the common pleas, appealed

Return.

or stayed, upon which he has an execution, on notice to return the execution, stating thereon such fact.

To note time of receiving writ.

§ 195. It shall be the duty of every constable, on the receipt of any writ or other process, (subpoenas excepted,) to note thereon the time of receiving the same ; he shall also state in his return on the same, the time and manner of executing it.

Must go to defendant's residence.

§ 196. No constable shall make a return on any process of "Not found," as to any defendant, unless he shall have been once at least to the usual place of residence of the defendant, if such defendant have any in the county.

who he may apprehend.

§ 197. It shall be the duty of every constable to apprehend on view or warrant, and bring to justice, all felons and disturbers and violators of the criminal laws of this State, to suppress all riots, affrays and unlawful assemblies, which may come to his knowledge, and generally to keep the peace in his proper county.

Extent of authority.

§ 198. In serving all process either civil or criminal, and in doing his duties generally, when not otherwise restricted by law, the authority of a constable shall extend throughout the whole county in which he may be appointed ; and in executing and serving process issued by a justice of the peace, he shall have and exercise the same authority and powers over goods and chattels, and the persons of parties as is granted by law to a sheriff or coroner under like process issued from courts of record.

Duty in taking prisoner to jail.

§ 199. When it shall become the duty of the constable to take the body of any person to the jail of the county, he shall deliver to the sheriff or jailor a certified copy of the execution, commitment or other process, whereby he holds such person in custody, and return the original to the justice who issued the same ; which copy shall be sufficient authority to the sheriff or jailor to keep the prisoner in jail, until discharged by due course of law.

To pay over money.

§ 200. Constables shall pay over to the party entitled thereto, all money received by them in their official capacity, if demand be made by such party, his agent or attorney, at any time before he returns the writ upon which he has received it ; if not paid over by that time, he shall pay the same to the justice when he returns the writ.

Penalties against

§ 201. Constables shall be liable to ten per cent. penalty upon the amount of damages for which judgment may be entered against them for failing to make return, making a false return, or failing to pay over money by them collected, or received in their official capacity, and such judgment must include, in addition to the damages and costs, the penalty herein provided.

ARTICLE XIV.

GENERAL PROVISIONS.

§ 202. The provisions of the act entitled "An act to establish a code of civil procedure," passed March 11, 1853, which are in their nature applicable to the jurisdiction and proceedings before justices, and in respect to which no special provision is made by statute, are applicable to the proceedings before justices of the peace.

Civil Code to apply to Justice Courts when applicable.

§ 203. Every justice of the peace must keep a book denominated a docket, which shall be furnished by the trustees of the proper township, which must be entered by him :

The docket ; what it must contain.

1. The title of every action in which the writ is served or when the parties voluntarily appear :

2. The date of the writ, the time of its return, and if an order to arrest the defendant or attach property was made, such fact must be stated, together with the affidavit upon which such order was made :

3. The filing of the bill of particulars of either party and nature thereof, and when not of too great length, the same shall be entered at length on the docket :

4. Which of the parties, if either of them, appear at the trial :

5. Every adjournment, stating on whose application, whether on oath, or consent, and to what time :

6. When trial by jury is demanded, the demand must be stated, and by whom made, the names of the jurors selected, and the time appointed for the trial :

7. The names of the jurors who appear and of those sworn, the names of all witnesses sworn, and at whose request :

8. The exceptions to the ruling of the Justice on questions of law taken by either party :

9. The verdict of the jury, and when received ; if the jury disagree and are discharged, that fact must be stated :

10. The judgment of the justice, specifying the items of costs included, and the time when rendered :

11. The issuing of execution and orders to sell, when issued, and to whom, the renewals thereof, if any, when made, the return, and when made, and a statement of any money paid to the justice, and by whom :

12. The giving of a transcript, to be filed in the clerk's office, and when given :

13. If appeal be taken, the undertaking and the time of entering into the same, and by which party taken :

14. The undertaking for stay of execution, and time of giving the same :

15. The satisfaction of the judgment, and the time of satisfying the same.

How and when
entries made.

§ 204. The several particulars in the last section specified, must be entered under the title of the action to which they relate, and at the time when occurred—(except that bills of exceptions, in regard to the ruling on questions of law or evidence, need not be entered until after the judgment, unless required by the justice or one of the parties.) Such entries in a justice's docket, or a transcript thereof, certified by the justice or his successor in office, shall be evidence to prove the facts stated therein.

Entries as evi-
dence.

The index.

§ 205. A justice must keep an alphabetical index to his docket, in which must be entered the names of the parties to each judgment, with reference to the page of the entry; the names of the plaintiffs must be entered in the index in the alphabetical order of the first letter of the family names; he shall number the cases progressively upon his docket, and shall correspondingly number the papers in each case; he shall keep the entire papers in each action together, and in packages of a proper and convenient size, and in the order in which the cases are numbered on his docket.

How papers
kept.

How Justice to
dispose of
dockets, laws
and papers, at
expiration of
term.

§ 206. It is the duty of every justice upon the expiration of his term of office, to deposit with his successor, his official docket, as well his own as those of his predecessors, which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the township or otherwise before his successor is elected and qualified, the dockets and papers in the possession of such justice must be deposited with the nearest justice in the township, if any there be, and if there be none, then with the nearest in the county, there to be kept until a successor shall be chosen and qualified, then to be delivered over to such successor on request.

Justice receiv-
ing same to re-
ceipt.

§ 207. A justice receiving by succession, or on deposit, any such docket, papers and laws, shall, if requested, give a receipt therefor to the person from whom he receives the same.

How Justices
receiving such
books and pa-
pers, may pro-
ceed.

§ 208. The justice with whom the docket of another may be deposited, either during a vacancy, or as the successor is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered, and unsatisfied, and not docketed in the court of common pleas, in the same manner and with the same effect as the justice by whom the judgment was rendered, might have done; to take bail in appeal, or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner, as if the same had been originally had, or instituted before him.

§ 209. When two or more justices are equally entitled to be deemed the successor in office of a justice, the trustees of the township shall designate which justice is to be deemed the successor of the justice going out of office, or whose office has become vacant, and shall enter a certificate in the last docket of the justice going out of office or whose office is vacant, of their determination, before the same is delivered to such successor.

How successor designated.

§ 210. In case of the sickness or other disability or necessary absence of a justice at the time appointed for trial, another justice of the same township may, at his request, attend in his behalf, and shall thereupon become vested with the power for the time being of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice before whom the writ was returnable. If the case be adjourned the justice before whom the summons was returnable must resume jurisdiction.

If justice sick or absent, another justice to try cause.

§ 211. The summons, execution, and every other paper made or issued by a justice, must be filled up without a blank to be filled by another, otherwise it is void.

Papers void if they contain blank.

§ 212. A justice at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution, with or without an order to arrest the defendant or to attach property. Such deputa-
tion must be in writing on the process.

Justice may depute person to serve summons.

§ 213. The person so deputed has the authority of a constable in relation to the service, execution and return of such process, and is subject to the same obligations, but there can be no fee for his services taxed in the bill of costs.

and his authority.

§ 214. A justice may punish, as for a contempt, persons guilty of the following acts, and no others :

Justice may punish certain contempts.

1. Disorderly, contemptuous, or insolent behavior toward the justice, tending to interrupt the due course of a trial or other judicial proceeding before him :

2. A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding :

3. Wilful resistance in the presence of the justice, to the execution of a lawful order or process made or issued by him.

§ 215. A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, when an opportunity to be heard in his defence or excuse must be given. The justice may thereupon discharge him, or may convict him for the offence, and adjudge a punishment by fine or imprisonment, or both ;

His manner of proceeding.

such fine not to exceed twenty dollars, and such imprisonment ten days.

Judgment and
warrant.

§ 216. The conviction, specifying particularly the offence and the judgment thereon, must be entered in his docket; a warrant of commitment to the jail of the county until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable to whom it may be given, and by the jailor of the county.

Justice may re-
quire non-resi-
dent to give se-
curity.

§ 217. When a person intending to bring an action before a justice of the peace is a non-resident of the township in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for the costs of suit, which may be done by depositing a sum of money deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking with surety approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action.

When plaintiff
removes after
action com-
menced.

§ 218. If any plaintiff or plaintiffs after commencing an action before a justice in the township in which he or they reside, remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money equal to the costs that have accrued and that probably will accrue, or require in place thereof that such party give sufficient surety for all costs which have accrued or which may accrue in the action, and in default to do either shall enter a nonsuit against the plaintiff or plaintiffs.

When evidence
of indebtedness
to be filed.

§ 219. That in all actions instituted before a justice of the peace founded upon any bond, sealed bill, promissory note, or other instrument of writing for the payment of a sum of money certain, upon which the whole amount of money therein promised is due, it shall be the duty of the plaintiff, his agent or attorney, to file said bond, sealed bill, promissory note, or other written evidence of indebtedness, upon which such suit is brought with such justice of the peace; and if upon the trial, judgment shall be entered thereon, in favor of the plaintiff, such bond, sealed bill, promissory note, or instrument of writing shall be retained by the justice so rendering judgment, who shall endorse thereon the sum for which he shall have entered judgment, (provided the same shall in nowise exceed one hundred dollars, unless judgment thereon shall have been confessed,) and shall subscribe his name thereto. And upon payment or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon said bond, sealed bill, promissory note, or other instrument of writing, for the

How Justice to
endorse same.

When no other
suit to be insti-
tuted thereon.

recovery of any farther sum or sums, the payment of which is secured by the same bond, sealed bill, promissory note, or other written evidence of indebtedness: *Provided*, that when an appeal shall be taken from the judgment of such justice, it shall be his duty to deliver or transmit any bond, sealed bill, promissory note, or other written evidence produced before him on trial, to the clerk of the court of common pleas, to which such cause shall have been appealed, on or before the second day of the term of the court next after taking such appeal: *Provided*, also, that nothing herein contained shall be construed to lessen or in any wise affect the right which any creditor now have to demand from any justice of the peace, any joint and several obligations for the purpose of prosecuting any party to said obligation other than the party against whom judgment may have been rendered.

To be transmitted to clerk in case of appeal.

When the evidence of indebtedness is joint and several, same may be obtained to prosecute defendant not served.

§ 220. It shall not be lawful for any justice of the peace to purchase any judgment upon any docket in his possession, and for so doing for every such offence such justice shall forfeit and pay a sum not more than fifty nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected shall be paid into the treasury of the township where such offence was committed.

Penalty against justice for purchasing judgment.

§ 221. The provisions of this act do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment and determination in all respects as if it had not been adopted.

Suits pending not affected.

ARTICLE XV.

§ 222. The act defining the powers and duties of justices of the peace, and constables, passed March 14th, 1831, and acts amendatory thereto, passed December 31st, 1831, February 25, 1833, March 3d, 1834, March 12th, 1844, February 17th, 1846, February 8th, 1847, February 24th, 1848, March 23d, 1849, the act allowing jurors before justices of the peace, passed February 14th, 1840, and acts amendatory thereof, passed March 4th, 1845, February 23d, 1846, the act allowing and regulating attachments before justices of the peace, passed January 7th, 1824, and acts amendatory thereof, passed January 16th, 1839, February 6th, and March 14th, 1850, the act to revive certain acts therein named, passed March 12th, 1845, sections one, five and six of an act to regulate proceedings before justices of the peace, passed March 24, 1849, and an act defining the duties of justices of

Repealing clause.

the peace, and constables in civil cases, passed March 25th, 1851, the act entitled an act to regulate the action of forcible entry and detainer, passed February 25th, 1831, and acts amendatory thereof, passed February 23rd, 1835, March 13th, 1843, January 22nd, 1844, January 15th, 1845, February 27th, 1846, March 19th, 1850, the 4th section of an act for the protection of purchasers at judicial and tax sales, and an act amendatory thereof, passed February 5th, 1847, the act allowing and regulating writs of replevin before justices of the peace, passed February 14th, 1846, and the acts supplementary thereto, passed March 14th, 1850, be and the same are hereby repealed.

Time of taking
effect.

§ 223. This act shall take effect and be in force from and after the first day of July, one thousand eight hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

GEORGE REX,
Speaker of the Senate, pro tempore.

March 14, 1853.

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AN ACT

To amend the laws prescribing the duties of County Recorders, and repealing a section therein recited.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the recorders of the several counties of this State, shall be entitled to the sum of ten cents, to be paid on the presentation and reception of every deed, mortgage, power of attorney, or other instrument of writing presented for record, in addition to the fees now prescribed by law, to be paid by the person, or persons presenting the same, for the purpose of keeping up the general indexes.

Recorders
paid for keep-
ing indexes.

§ 2. The second section of the act entitled "an act to amend the act entitled 'an act to authorize county recorders to transcribe records in certain cases,'" passed January 30th, 1835, and for other purposes, in the words following, to wit: "it shall be the duty of said recorders hereafter to continue said indexes from this time onward, as the business of their respective offices may require, without compensation, further than the cost of the books used for that purpose," be, and the same is hereby repealed.

Section repeal-
ed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

November 19, 1852.

AN ACT

To authorize Courts of Common Pleas to appoint receivers in cases in attachment, and to repeal section four of the act entitled "an act allowing and regulating writs of attachment," passed January 17, 1834.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all cases in attachment now pending in the court of common pleas, or which may hereafter be commenced, said court, or any judge thereof in vacation, shall have power, on the application of the plaintiff, or any credi-

How receivers
appointed.

Security approved by the clerk.

tor who may have filed a declaration in any such case, and upon good cause shown, to appoint a receiver, who shall take an oath faithfully to discharge his duty, and shall give bond to the State of Ohio, in such sum as said court or judge thereof may direct, and with such security as shall be approved of by the clerk of said court, conditioned for the faithful performance of his duty as such receiver, and to pay over all moneys, and account for all property which shall come into his hands by virtue of such appointment, at such times and in such manner as said court may direct.

Their powers and duties.

§ 2. Receivers appointed under the provisions of this act, shall take possession of all notes, due-bills, books of account, accounts, and all other evidences of debt that have been taken by the sheriff, or other officer, as the property of the defendant in such attachment, and shall proceed to settle and collect the same, and all credits due to the defendant; and for that purpose may commence and maintain suits in his own name, as such receiver, and shall also have power to manage and control any real estate that may have been attached, and receive the rents and profits thereof, until such real estate shall be sold, by the order of the court. Such receiver shall also, when required, report his proceedings to the court, and shall hold all moneys collected by him, and property which may have come into his hands, subject to the order of the court.

Rights of defence not changed.

§ 3. In all actions or suits in the name of any such receiver, the defendants shall have the same rights of defence, by way of set off, or otherwise, which they would have had if this act had not been passed.

Receivers to notify debtors.

§ 4. That such receiver shall, upon his appointment, forthwith, cause the several persons indebted to said defendant, to be notified of his appointment as receiver, in said proceeding in attachment; which notice shall be written or printed, and be served on said debtor, or debtors, personally, or by leaving a copy thereof at their place of residence, and from the date of such service said debtors shall stand indebted to the plaintiff in attachment, to the amount of moneys and credits in their hands, or due from them to the said defendant in attachment, and shall account therefor to said receiver.

Property held by sheriff.

§ 5. That the property attached, shall remain in the hands of the sheriff, or other officer, unless otherwise ordered, by the court; and unless the garnishee, in whose possession it may be found, shall give bond to the officer, with two sufficient sureties, freeholders of the county, in double the appraised value thereof, conditioned that the same property, or its appraised value in money, shall be forthcoming to answer the judgment of the court; provided, that if it shall appear to the court that any part of said property shall have

been lost, or destroyed, by unavoidable accident, they shall remit the value thereof to the person so bound.

§ 6. That section four of the act entitled "an act allowing and regulating writs of attachment," passed January seventeenth, one thousand eight hundred and twenty-four, be, and the same is hereby repealed. Act repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

November 24, 1852.

AN ACT

Making appropriations in part for the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, that the following sums be, and the same are hereby appropriated out of any money in the treasury not otherwise appropriated, for the years one thousand eight hundred and fifty-two and one thousand eight hundred and fifty-three in part Appropriations.

For the payment of the members of the general assembly, their clerks, sergeants-at-arms, door keepers and messengers, the sum of twenty-thousand dollars. Payment of members of General Assembly.

For the payment of such printing as remains unpaid, and as shall be ordered by either house of the general assembly, twenty thousand dollars. Printing.

For mileage of county treasurers, one thousand five hundred dollars. Mileage of Co. Treasurer.

For provisions, household expenses, clothing, servants, fuel, stationery, labor, medicines, and contingent expenses for the lunatic asylum, the sum of five thousand dollars. Lunatic Asylum.

For provisions, household expenses, clothing, fuel, labor, servants and contingent expenses of the asylum for the deaf and dumb, one thousand dollars. Asylum Deaf and Dumb.

For clothing, provisions, labor, servants, stationery, materials for work-shops and contingencies for the asylum for the blind, one thousand dollars. Asylum for Blind.

For the prosecution of the work upon the new state house and to defray the necessary expenses of the profitable em- State House.

ployment of convict labor thereon, as provided by law, the additional sum of twenty thousand dollars, seven thousand dollars of which shall be paid to the warden of the Ohio penitentiary on the order of the directors under the provisions of the resolution passed March third, one thousand eight hundred and fifty.

Transportation of convicts to penitentiary.
Salaries of warden and clerk.
Seals and presses.

For the transportation of convicts to the penitentiary, and costs of prosecution and any deficit in former appropriations, the sum of five thousand dollars.

For salaries of warden, deputy warden, and clerk of the penitentiary, two thousand dollars.

For engraving and furnishing seals and presses for the district court, furnished by the secretary of State, agreeably to the act passed March nineteenth, one thousand eight hundred and fifty-two, entitled "an act to provide for furnishing new seals and seal presses for courts," the sum of one thousand and fifty-five dollars.

Pay deficit.

To pay deficit in former appropriations for distributing laws and journals, one thousand and thirty-eight dollars and eighty-nine cents.

Expenses of presidential election.
Special elections.
Penitentiary.

For expenses of presidential election, to be paid according to law, five thousand dollars.

For expenses of special elections, one thousand dollars.

To the penitentiary fund for pay of officers, guards, physician, and incidental expenses, as provided by law, eight thousand dollars.

Moneys not to be drawn until needed.

§ 2. That no moneys by this act appropriated, shall be drawn from the treasury by any disbursing officer or agent until the same shall be necessary for the purpose to which it is herein directed to be applied.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 2, 1852.

AN ACT

Relating to the sale of Bonds of Railroad Companies and to increase the number of Directors.

Directors may sell the bonds, notes, &c., of the company.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Directors of any Railroad Company, authorized to borrow money and to execute bonds or promissory notes therefor, shall be, and they are hereby authorized to sell, negotiate, mortgage or pledge such bonds or notes, as

well as any notes, bonds, scrip, or certificates, for the payment of money or property which such company may have heretofore received, or shall hereafter receive, as donations, or in payment of subscriptions to the capital stock, or for other dues of such company, at such times and in such places, either within or without the State, and at such rates and for such prices as in the opinion of said directors will best advance the interests of such company; and if such notes or bonds are thus sold at a discount, such sale shall be as valid in every respect and such securities as binding for the respective amounts thereof, as if they were sold at their par value.

Sales at a discount valid.

§ 2. No director of any railroad company shall, either directly or indirectly, purchase any shares of the capital stock, or any of the bonds, notes, or other securities, of any railroad company of which he may be a director, for less than the par value thereof; and all such stocks, bonds and notes, or other securities, that may be purchased by any such director for less than the par value thereof, shall be null and void.

Directors not to purchase stock, &c., at less than the par value.

§ 3. That any railroad company heretofore incorporated or which may be hereafter incorporated, in this State, shall be and is hereby authorized, by vote of a majority of the stock of such company, to increase the number of directors provided for in the charter of such company to any number not greater than thirteen; and the increased number of directors thus created shall have the same powers and perform the same duties as may be provided for in the charter of such company.

Companies may increase the number of directors.

to not more than thirteen.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate,

December 15, 1852.

AN ACT

To transfer certain funds in the hands of County Treasurers to the Common School Fund.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the moneys remaining in the hands of the Treasurers of the several counties in this State, collected from a tax on dogs, after paying all legal claims against said

Tax on dogs to be paid into the school fund.

funds, be transferred to the common school fund of the proper county, to be distributed by the auditor of such county as other school funds are by law distributed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 21, 1852.

AN ACT

To regulate the fees of County Treasurers in certain cases.

Treasurers to
collect school
taxes under
certain acts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the County Treasurers of this State shall be allowed for collecting and paying over school taxes assessed under the act of February 21, 1849, and an act amendatory thereto, passed March 13, 1850, for the better regulation of common schools in cities and towns, the sum of one per cent. on all moneys by them collected and paid over under the provisions of said acts.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 21, 1852.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in the several counties of the Fifth Judicial District of Ohio.

Terms of the
common pleas
in the Fifth
Judicial Dis-
trict.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Court of Common Pleas shall be held in and for the several counties of the Fifth Judicial District of Ohio, at the times following, to wit :

FIRST SUBDIVISION.

In the county of Clermont, the first Tuesday of March, the third Tuesday of May, and the fourth Tuesday of November. In the first subdivision

In the county of Brown, the fourth Tuesday of March, the second Tuesday of June, and the first Tuesday of November.

In the county of Adams, the second Tuesday of April, the first Tuesday of August, and the third Tuesday of October.

SECOND SUBDIVISION.

In the county of Fayette, the first Tuesday of February, the fourth Tuesday of May, and the second Tuesday of October. Second.

In the county of Highland, on the third Tuesday of February, the first Tuesday of June, and the third Tuesday of October.

In the county of Ross, the second Tuesday of March, the third Tuesday of June, and the second Tuesday of November.

THIRD SUBDIVISION.

In the county of Pickaway, on the third Tuesday of February, the fourth Tuesday of May, and the second Tuesday of November. Third.

In the county of Madison, the first Tuesday of April, the fourth Tuesday of June, and the fourth Tuesday of October.

In the county of Franklin, on the first Tuesday of March the first Tuesday of June, and the first Tuesday of October.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 10, 1853.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in the several counties of the Seventh Judicial District of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Court of Common Pleas shall be held in and for the several counties of the Seventh Judicial District of Ohio, at the times following, to wit: Seventh common pleas district.

FIRST SUBDIVISION.

First subdivi-
sion.

In the county of Fairfield, the fourth Monday in February, the second Monday in May, and the first Monday in October.

In the county of Perry, the second Monday in March, the fourth Monday in May, and the third Monday in October.

In the county of Hocking, the fourth Monday in March, the first Monday in June, and the fourth Monday in October.

SECOND SUBDIVISION.

Second.

In the county of Scioto, the second Monday in February, the second Monday in May, and the fifth Monday in October.

In the county of Pike, the fourth Monday in February, the fourth Monday in May, and the third Monday in October.

In the county of Lawrence, the second Tuesday in March, the second Tuesday in June, and the fourth Monday in October.

In the county of Jackson, the third Monday in March, the fifth Monday in May, and the second Monday in October.

In the county of Vinton, the fourth Monday in March, the first Monday in June, and the first Tuesday in October.

THIRD SUBDIVISION.

Third.

In the county of Washington, the fourth Thursday in February, the second Wednesday in May, and the third Monday in October.

In the county of Gallia, the second Tuesday in March, the fourth Monday in May, and the first Monday in November.

In the county of Meigs, the fourth Thursday in March, the first Thursday in June, and the fifth Monday in October.

In the county of Athens, the fifth Thursday in March, the second Thursday in June, and the second Monday in October.

JAMES C. JOHNSON,
Speaker of House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 11, 1833.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in
Fourth Judicial District of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the Court Common Pleas shall be holden in the several counties of the Fourth Judicial District of Ohio, as follows :

Fourth common pleas district.

FIRST SUBDIVISION.

In the county of Lucas, on the twenty-first of day of March, the fifth day of July, and the twentieth day of December.

First subdivision.

In the County of Ottawa, on the ninth day of May, the twenty-ninth day of August, and the fourteenth day of December.

In the county of Sandusky, on the fourteenth day of March, the twentieth day of June, and the fifth day of December.

In the county of Erie, on the seventh day of February, the sixteenth day of May, and the thirty-first day of October.

In the county of Huron, on the twenty-eighth day of February, the sixth day of June, and the twenty-first day of November.

SECOND SUBDIVISION.

In the county of Lorain, on the second Tuesday of February, the second Tuesday of May, and the first Tuesday of November.

Second.

In the county of Medina, on the first Tuesday of March, the last Tuesday of May, and the fourth Tuesday of November.

In the county of Summit, on the third Tuesday of March, the second Tuesday of June, and the first Tuesday of December.

THIRD SUBDIVISION.

In the county Cuyahoga, on the fifteenth day of February, the seventeenth day of May, the second day of August, and the fifteenth day of November.

Special term. § 2. That whenever the state of business in any of the said Courts of Common Pleas is such as to render it necessary, such court shall have power to appoint and hold an adjourned term for the purpose of completing the business of any regular term, upon notice thereof being entered upon its journals.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

January 12, A. D. 1853.

AN ACT

To amend an act entitled "An act to amend the act creating the office of County Surveyor, and defining his duties," passed December 15, 1838.

Swan, 897,
 sec. 1, amend-
 ed.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That section one of the act entitled "An act to amend the act creating the office of County Surveyor, and defining his duties," passed December 15, A. D. 1838, be, and the same is hereby so amended as to read as follows:

How vacancy
 filled.

§ 1 *Be it enacted by the General Assembly of the State of Ohio,* That whenever the office of county surveyor shall become vacant, by death, resignation or otherwise, the court of common pleas, next to be holden for the county wherein such vacancy shall have happened, or the commissioners of such county, in the vacation of said court, shall appoint a person qualified to discharge the duties of said office, who shall hold such appointment until the next annual election, and until his successor is elected and qualified, and shall take an oath or affirmation, and give bond, with security, in the manner provided in the fourth section of the act to which this is an amendment; *provided,* that when any such appointment shall be made by said commissioners, the same shall be by them forthwith certified to the clerk of the court of common pleas of the proper county.

Term of per-
 son appointed.

His oath and
 bond.

Appointment
 certified.

Said sec. 1. re-
 pealed.

§ 2. That the original section one of said act, be, and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

January 12, 1853.

AN ACT

Authorizing Incorporated Companies to change their names.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That from and after the passage of this act, it shall be lawful for any company now incorporated within this State, to change the name of said company in manner and form as is provided for in this act. Company may change name.

§ 2. That upon petition being filed by the directors of any company as aforesaid, in the court of common pleas of the county in which the principal office of such corporation is located, and upon giving thirty days notice by publication in a newspaper of general circulation in said county, of the object and prayer of such petition, said court shall, at any regular term after the publication of said notice, upon good cause shown, decree the change of the name sought for by said board of directors. How change effected.

§ 3. That in case the name of any company is changed, as aforesaid, a copy of the decree shall be filed with the Secretary of State, and also published in some newspaper of general circulation in the county aforesaid. Copy of decree to be filed with Secretary of State.

§ 4. That when the provisions aforesaid have been complied with, such company shall thereafter be known by such new name, and shall have all the powers, and be subject to the same restrictions as if no change of name had been made, and no such change of name shall affect, in any manner, the rights of such company, or of any individual, or other corporation. Effect of change.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 12, A. D. 1853.

AN ACT

Supplementary to the act entitled "An act to abolish the offices of Register and Receiver of the State Land Office at Defiance, to regulate the sale of lands at said office, and to create the office of Land Commissioner," passed April 16th, 1852; and to repeal the seventh and fourteenth sections of said act.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That sections seven and fourteen of said act be and the same are hereby repealed; *Provided*, that such repeal shall 50 O. L. § 80, 7 and 14 repealed.

in no wise affect any rights accruing under said seventh section repealed.

How sold, to
actual settlers.

§ 2. That said lands shall be sold to actual settlers at seventy-five per cent below the appraised value ; Provided, there shall not be sold to any one person under the provisions of this act, at such reduced price, more than one quarter of one section of said lands, and provided that any applicant who applies to enter or purchase any of said land at said reduction, shall, before any certificate or other evidence of purchase or entry is issued to him or her by said commissioner, make and subscribe an affidavit that it is bona fide his or her intention, within twelve months, from and after said purchase, to enter upon and improve the tract so purchased ; and that he or she has not made said purchase for the purpose of speculation merely ; but for the purpose of securing a home for himself or herself and family ; which affidavit shall be preserved by the commissioner aforesaid with the records of his office.

When sale in-
valid.

§ 3. That in the event of any person either directly or indirectly entering a greater quantity of land than he is permitted to purchase by the second section of this act, all entries or purchases made by any such person under this act shall be held and deemed fraudulent for all intents and purposes ; and if no deed has issued to such purchaser, none shall ever be delivered to him, and if a deed has been executed, then the same shall be held invalid as a deed of conveyance upon proof of such fraudulent entry or purchase, and the purchaser shall not only lose the benefit of his purchase, but shall in no way recover back the money paid for said lands.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 12, A. D. 1853.

AN ACT

To provide for the distribution and safe-keeping of the laws and journals.

Laws distrib-
uted to coun-
ties.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the General Assembly, at each session thereof, shall by joint resolution, direct the number of copies of the laws and journals to which each county shall be entitled, to

be distributed and preserved, according to the provisions of this act.

§ 2. The Secretary of State shall, at the close of each session of the General Assembly, or as soon thereafter as the laws and journals may be printed and ready for distribution, box up the number which each county may be entitled to, and forward the same by public conveyance, directed to the clerk of the court of common pleas; and in all cases where said laws and journals cannot reach the county seat of any county, for want of some mode of public conveyance, the Secretary of State shall cause the same to be deposited in a secure place, as near to the county seat of any county as may be practicable, and notify the said clerk of the delivery of the laws and journals at such point; and in all such cases, the Secretary of State shall contract with the said clerk to convey said laws and journals to his office at the county seat of his county.

How the Secretary shall distribute.

§ 3. When the Secretary of State shall forward the laws and journals to the several counties, as provided for in the second section of this act, he shall pay the freight on the same in advance, and take a duplicate receipt for the amount so paid, one of which he shall file with the Auditor of State.

Freight shall be paid in advance.

§ 4. Each member of the General Assembly, each clerk and sergeant-at-arms, each judge of every court of record, each justice of the peace, constable, sheriff, coroner, recorder, commissioner of insolvents, prosecuting attorney, (for the use of the grand jury,) county auditor, treasurer and surveyor, county commissioners, the directors of any county infirmary, township trustees and township clerk, shall be entitled to receive one copy of the general laws, and each clerk of the supreme court, and court of common pleas, shall be entitled to receive two copies of the general laws for the use of their offices, and each township clerk one additional copy for the use of the township officers not herein provided for.

Persons entitled to copies of the general laws.

§ 5. The Secretary of State, at the same time that he forwards to the clerks of the courts of common pleas of the several counties of this State, the laws and journals, as herein provided, shall forward such number of extra copies of the general laws as he may deem necessary, to be disposed of, at a price not exceeding the actual cost, to those wishing the same, and the proceeds of such sales shall be paid into the county treasury of such county.

Extra copies for each county.

§ 6. The Secretary of State shall furnish the Governor for his own use, with one copy, and with such number of copies of the general laws as may be required for exchange with other States; he shall furnish the Auditor of State with four, and the Treasurer of State with two, the Attorney General with one, for the use of their offices, and the State

Furnishing State officers.

Librarian with five copies of the general laws for the use of the Library.

Persons entitled to a copy of local laws.

§ 7. When the laws of a local nature, and those of a general nature are stitched in separate volumes, each member of the General Assembly shall be entitled to one copy of the local laws, and each clerk of the supreme court and court of common pleas, each judge of the court of probate, and each county auditor, shall receive one copy of the local laws for the use of their offices respectively, and each township clerk one copy of the local laws for the use of his township, and each of the trustees of the several wards, and clerks of cities, shall be entitled to one copy, and each presiding officer in any incorporated town shall be entitled to one copy.

Persons entitled to a copy of the journals.

§ 8. Each member of the General Assembly, for his own use, and each clerk of the supreme court and court of common pleas, and county auditor, for the use of their offices respectively, and each township clerk, for the use of the inhabitants of his township, shall receive one copy of the journals of the Senate and House of Representatives; the Auditor, Secretary and Treasurer of State shall each be entitled to one copy, and the State Librarian, for the use of the Library, five copies of said journals.

Literary institutions entitled to a copy of the laws and journals.

§ 9. Each university, college, academy, and literary institution of this State, or that may hereafter be established, shall be entitled to receive one copy of the general laws of this State, one copy of the journals of the Senate and House of Representatives, and one copy of such each session thereafter.

Who shall distribute in each county, and manner of procedure.

§ 10. The clerk of the court of common pleas in each county shall, on demand, deliver to each of the persons and literary institutions entitled to copies of the laws and journals provided for in this act; taking from the respective persons their receipts for the laws and journals so delivered, which shall be filed in the county auditor's office, subject to inspection.

Who shall retain and who deliver to successors, such laws and journals.

§ 11. Every person entitled (except members of the General Assembly, clerks and sergeants-at-arms, judges of the courts and literary institutions) to a copy or copies of the laws and journals, and who has received the same, shall deliver over the same to his or their successors in office; and the same shall remain the property of the State of Ohio; and if any person aforesaid, who is required to deliver over to his successor such laws and journals, shall refuse, on demand, so to do, he shall forfeit and pay any sum not less than five nor more than fifteen dollars, to be recovered in an action of debt in the name of the State of Ohio, before any justice of the peace, for the use of the county.

How to dispose of surplus numbers.

§ 12. Whenever any greater number of copies of the laws and journals shall be forwarded to the clerk of the court of common pleas of any county than is necessary to supply

each person, officer, or institution, or to be otherwise disposed of, according to the provisions of this act, and which shall remain unsold, then the clerk aforesaid shall carefully retain the surplus number of the laws and journals in his office, to be delivered to the officers of any new township which may be hereafter organized in said county.

§ 13. Whenever any greater number of copies of the laws and journals shall be printed than may be required for distribution under this act, the surplus copies shall be deposited in the office of the Secretary of State, subject to future distribution by law. Same subject.

§ 14. The act for the distribution and safe-keeping of the laws and journals, passed March 12th, 1831, be and the same is hereby repealed. Former act repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 12, A. D. 1853.

AN ACT

To fix and provide for holding the terms of the Court Common Pleas in the Eighth Judicial District of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the court of common pleas shall be held in the several counties of the Eighth Judicial District at the times following, to wit :— Eighth Judicial District.

FIRST SUBDIVISION.

In the county of Muskingum, the second Tuesday of February, the fourth Tuesday of May, and the third Tuesday of September. First subdivision.

In the county of Morgan, the second Tuesday of March, the third Tuesday of June, and the first Tuesday of November.

In the county of Noble, the first Tuesday of April, the fourth Tuesday of July, and the third Tuesday of November.

SECOND SUBDIVISION.

Second subdivision. In the county of Belmont, the third Tuesday of February, the second Tuesday of May, and the third Tuesday of September.

In the county of Monroe, the second Tuesday of March, the first Tuesday of June, and the second Wednesday of October.

In the county of Guernsey, the fourth Tuesday of March, the third Tuesday of June, and the fourth Tuesday of October.

THIRD SUBDIVISION.

Third subdivision. In the county of Tuscarawas, the first Tuesday of February, the first Tuesday of May, and the second Tuesday of September.

In the county of Jefferson, the third Tuesday of February, the third Tuesday of May, and the fourth Tuesday of September.

In the county of Harrison, the second Tuesday of March, the second Tuesday of June, and the third Tuesday of October.

§ 2. That whenever the state of business in any of the said courts of common pleas is such as to render it necessary, such court shall have power to appoint and hold an adjourned term, for the purpose of completing the business of any regular term, and notice thereof shall be entered upon the journal.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 17, 1853.

AN ACT

Supplementary to the act entitled "An act relating to the organization of Courts of Justice and their powers and duties," passed February 19th 1852.

Judgments of
the supreme
court, now
carried in
effect. to

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for the Supreme Court, by special mandate or other proper mode, to require the district court or court of common pleas of the county in which any

suit determined in the supreme court shall have originated, to carry the judgment or decree of the supreme court into execution ; and the same shall thereupon be carried into execution by such inferior court, by process of execution or other lawful mode, as the case may require.

§ 2. The lands and tenements of the debtor shall be bound for the satisfaction of any judgment or decree for the payment of money of the supreme court against such debtor, from the first day of the term of said court, at which the judgment or decree shall be rendered, in all cases where such lands or tenements lie within the county where the suit originated, and all other lands and tenements, as well as goods and chattels of the debtor, shall be bound from the time they shall be seized in execution ; *Provided*, that in all cases where the party against whom a judgment or decree is rendered in the court of common pleas appeals his cause to the district court, and the same is thence removed to the supreme court, the lien of the opposite party on the real estate of said appellant, created by said judgment, shall not thereby be removed or vacated, but the real estate of said appellant shall be bound in the same manner as if said appeal had not been taken until the final determination of the cause in the supreme court.

Real and personal property liable for judgments.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 19, 1853.

AN ACT

To repeal the act entitled "An act granting licenses in certain cases," passed March 14, 1831, and an act to amend an act entitled "An act granting licenses in certain cases," passed March 7, 1835.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the act entitled "An act granting licenses in certain cases," passed March 14, 1831, and "An act to amend an act entitled 'An act granting licenses in certain cases,' " passed March 7, 1835, be and the same are hereby repealed.

License laws repealed.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 19, 1853.

AN ACT

To fix and provide for the terms of the District Court in the Second Circuit, being composed of the Fourth and Sixth Common Pleas Districts of Ohio.

Terms of the
district court,
second cir-
cuit.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the District Court shall be holden in the several counties of the Fourth and Sixth Common Pleas Districts of Ohio at the time following, to wit :

FOURTH COMMON PLEAS DISTRICT.

Fourth com-
mon pleas
district.

In the county of Huron, on the twelfth day of April.
In the county of Erie on the sixteenth day of April.
In the county of Ottawa, on the twenty-first day of April.
In the county of Sandusky, on the twenty-third day of April.
In the county of Lucas, on the twenty-ninth day of April.
In the county of Lorain, on the thirteenth day of September.
In the county of Medina, on the nineteenth day of September.
In the county of Summit, on the twenty-fourth day of September.
In the county of Cuyahoga, on the eleventh day of October.

SIXTH COMMON PLEAS DISTRICT.

Sixth.

In the county of Knox, on the tenth day of May.
In the county of Richland, on the twenty-third day of May.
In the county of Morrow, on the thirty-first day of May.
In the county of Delaware, on the fourth day of June.
In the county of Licking on the tenth day of June.
In the county of Coshocton, on the twentieth day of June.
In the county of Holmes, on the twenty-second day of June.
In the county of Wayne, on the twenty-ninth day of June.
In the county of Ashland, on the eleventh day of July.

Special terms,
when held.

§ 2. If from any cause, a failure to hold the prescribed term of the district court in any of the counties aforesaid should occur, it shall be the duty of the judges of the district court, on giving thirty days previous notice in such county, to hold a special term of the district court in such county, within the same year, to dispose of the business pending, and should important business arise in the district court in any of said counties which cannot be disposed of at the stated term of the court, for want of time, it shall be lawful for the judges

of the district court to hold a special term of the district court in such county, at such time as they shall determine on, giving thirty days previous notice thereof in such county.

§ 3. Should any day herein named for holding the terms of the district court fall on Sunday, the said court shall commence and be holden on the next day.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 19, 1853.

AN ACT

To authorize the Commissioners of counties to approve the bonds of Sheriffs, Coroners and Recorders, and to repeal the second section of an act to provide for the election of County Recorders, and prescribing their duties, passed February 25, 1831.

§ 1. *Be it enacted, by the General Assembly of the State of Ohio,* That all sheriffs and coroners hereafter elected shall, within ten days after they shall have received their commissions, give bond to the State of Ohio, with two or more sureties, to be *approved* by the county commissioners of the proper county, in any sum not exceeding fifty thousand nor less than five thousand dollars (at the discretion of said commissioners) conditioned for the faithful discharge of their respective duties.

Sheriffs and coroners to give bond to be approved by the county commissioners.

§ 2. That the Recorder of each county shall keep his office at the seat of justice of his county, and before entering upon the duties thereof, he shall give bond, with two or more sureties, to be approved by the county commissioners of the proper county, in the penal sum of two thousand dollars, payable to the State of Ohio, conditioned for the faithful discharge of his duties as recorder, and shall take and subscribe an oath or affirmation, to be endorsed on such bond, faithfully and impartially to discharge the duties of his office.

Recorder's bond.

§ 3. That all sheriffs, coroners and recorders elected in the year eighteen hundred and fifty-two, who have not given bond approved by the court of common pleas of the proper county, shall, within thirty days from and after the taking

Concerning the above named officers, elected in 1852.

effect of this act, give bond and security according to the provisions hereof.

Additional
security.

§ 4. That said county commissioners may, at any time during the continuance of such sheriff, coroner, or recorder in office, for good cause, require such further and additional security as they may deem proper.

Duty of com-
missioners,
when officers
refuse or ne-
glect to give
security.

§ 5. That if any sheriff, coroner, or recorder shall fail to give the necessary security within the time specified in this act, or *shall fail* to give such further and additional security as may be required under the fourth section of this act, within ten days after receiving a written notice from said county commissioners, requiring such additional security, then and in either case said commissioners are hereby authorized and required to declare the office of such sheriff, coroner or recorder vacant; and thereupon the proper proceedings shall be had to fill such vacancy.

Bond lodged
with the au-
ditor.

§ 6. That no judge, clerk or attorney, of any court shall be received as surety for any sheriff or coroner.

§ 7. The bonds required to be given under the provisions of this act, shall be lodged with the auditor of the proper county, and shall be by him recorded in a suitable book for that purpose to be provided.

Acts repeal-
ed.

§ 8. The first section of an act entitled "An act defining the duties of sheriffs and coroners in certain cases," passed February 25, 1824, and the original section two of an act entitled "An act to provide for the election of county recorders, and prescribing their duties," passed February 25, 1831, be and the same are hereby repealed.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 19, 1853.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in the several counties of the Ninth Judicial District of Ohio.

Terms of the
common pleas
in the ninth
judicial dis-
trict.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the courts of common pleas shall be held in the several counties of the Ninth Judicial District of Ohio as follows :

FIRST SUBDIVISION.

In the county of Stark, on the fourth Monday of March, the fourth Monday of July, and the third Monday of October. First subdivi-
sion.

In the county of Carroll, on the third Monday of March, the fourth Monday of August, and the first Tuesday of November.

In the county of Columbiana, on the first Monday of March, the second Monday of August, and the second Tuesday of November.

SECOND SUBDIVISION.

In the county of Mahoning, on the fourth Tuesday of February, the last Tuesday of May, and the third Tuesday of September. Second.

In the county of Portage, on the second Tuesday of February, the second Tuesday of June, and the first Wednesday after the second Tuesday of October.

In the county of Trumbull, on the second Tuesday of March, the fourth Tuesday of June, and the last Tuesday of October.

THIRD SUBDIVISION.

In the county of Lake, on the third Monday of February, the fourth Monday of May, and the fourth Monday of September. Third.

In the county of Geauga, on the first Monday of March, the first Monday of June, and the second Monday of October.

In the county of Ashtabula, on the third Monday of March, the third Monday of June, and the fourth Monday of October.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 19, 1856.

AN ACT

For opening and regulating Roads and Highways.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That all Roads and Highways, which have been, or may hereafter be, laid out and established agreeably to law, within this State, shall be opened, and kept in repair, in the manner Roads and
highways—
how laid out.

| | |
|---|---|
| hereinafter provided ; and all county and township roads shall hereafter be laid out and established agreeably to the provisions of this act ; and shall not be less than thirty, nor more than | |
| Their width. | sixty feet wide, and in all cases the width of such roads shall be determined by the viewers of the same, as hereinafter provided. |
| Application by petition. | § 2. That all applications for laying out, viewing, reviewing, altering, or vacating any county road shall be by petition to the county commissioners, signed by at least twelve freeholders of the county residing in the vicinity where said road is to be laid out, viewed, reviewed, altered, or vacated ; and one or more of the signers to any petition, presented as aforesaid, shall enter into bond, with sufficient security, payable to the State of Ohio, for the use of the county, conditioned that the person or persons, making such application for a view, review, alteration or vacation of any road, shall pay into the treasury of the county, the amount of all costs and expenses accruing on such view, review, alteration, or vacation in case the prayer of said petitioners shall not be granted, or when the proceedings had in pursuance thereof shall not be finally confirmed and established, and on neglect or refusal of the persons so bound, after a liability shall have accrued to pay into the treasury according to the tenor of the bond, all costs and expenses, that shall have accrued, the auditor of the county shall deliver such bond to the prosecuting attorney, whose duty it shall be to collect and pay over the same to the county treasurer ; and in all cases of contest, the court having jurisdiction of the case shall have full power to render judgment for costs, according to justice between the parties. |
| Bond given—by whom. | |
| Condition of the bond. | |
| How, and by whom collected. | |
| Specifications of petitions. | § 3. That all petitions for laying out or altering any county road shall specify the place of beginning, the intermediate points, (if any,) and the place of termination of said road. |
| Advertisements. | § 4. That previous to any petitions being presented, for a county road, or for the alteration of a county road, or for the vacation of a county road, notice thereof shall be given by advertisements, set up at the auditor's office, and in three public places, in each township, through which any part of said road is designed to be laid out, altered or vacated, at least thirty days previous to the meeting of the commissioners, at which the petition shall be presented ; also, a notice, stating the time when such petition is to be presented, and the substance thereof, shall be published for four consecutive weeks, before the presentation of any such petition, in some newspaper, published in the county, in which may be situated the road sought to be established, altered or vacated by such petition (if there be a newspaper printed therein) ; and on the petition being presented, and the commissioners satisfied that notice has been given, as aforesaid, they shall appoint three disinterested freeholders of the county as viewers, who shall also be a jury to assess and |
| Viewers ; | |

determine the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits to any property of the owner; and they shall also assess and determine how much less valuable, if any, the land or premises from which such appropriation may be taken, will be rendered by the opening and construction of said road, and also a skilful surveyor to survey the same, and shall issue their order, directing said viewers and surveyor to proceed, on a day to be named in said order, or on their failing to meet on said day, within five days thereafter, to view, survey, and lay out or alter said road; and also determine whether the public convenience requires that such road, or any part thereof shall be sixty feet in width, or whether a less width than sixty feet will as well promote the public convenience, and report the width which in their opinion, such road should be established and opened.

their powers
and duties.

§ 5. That it shall be the duty of the principal petitioner to give at least six days notice, in writing, to the owner, or owners, or their agents, if residing within the county, or if such owner be a minor, idiot or insane person, then to the guardian of such person, if a resident of said county, through whose land said road is proposed to be laid out and established; and also six days notice to the viewers and surveyor, named in the order of the commissioners, of the time and place of meeting, as specified in the said order; and it is made the further duty of the principal petitioner, if said road is proposed to be laid out on any lands owned by non-residents of the county, to cause a notice to such non-residents (if any there be,) to be published for four consecutive weeks, in some newspaper published in the county; but if there be no newspaper published in such county, then said notice shall be published in some newspaper of an adjoining county, having general circulation in said county, in which the lands are situated, sought to be affected by said road, which notice shall state the time and place of the meeting of the viewers and surveyor, as specified, in the order of the commissioners; and, also, the substance of the petition for said road.

Duties of the
principal pe-
titioner.

§ 6. That it shall be the duty of the viewers and surveyor appointed as aforesaid, after receiving the notice required in the foregoing section, to meet at the time and place specified, in the order of the commissioners aforesaid, or within five days thereafter, and after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointments, respectively, shall take to their assistance two suitable persons, as chain carriers, and one marker, and proceed to view, survey, and lay out, or alter said road, as prayed for in the petition, or as near the same as, in their opinion, a good road can be made, at a reasonable expense, taking into consideration the utility, convenience, and inconvenience and expense which will result to individuals, as well as to the public, if such road,

Viewers and
surveyors to
be qualified,
and

to lay out and
alter roads.

Viewers to assess damages ;

or any part thereof shall be established and opened, or altered; and also as a jury discharge the duties required of them by the fourth section of this act. And the said viewers shall, in addition to their duties as viewers, also at the same time assess and determine the damages, sustained by any person or persons through whose premises the said road is proposed to be established: Provided, that such viewers shall not be required to assess or award damages or compensation to any person or persons, except minors, idiots or lunatics, in consequence of the opening of said road, unless the owner or owners, or their agents, having notice, as provided for in the foregoing section, of the application and proceedings by which his, her, or their property is sought to be appropriated, shall have filed a written application with said viewers, giving a description of the premises, on which, by them, damages or compensation are claimed: Provided further, that all applications for damages shall be barred, unless they be presented as provided for by this act.

Survey—how made.

§ 7. That the surveyor shall survey the said road under the direction of the viewers, and cause the same to be conspicuously marked throughout, noting the courses and distances, and at the end of each mile, shall cause the number of the same, and also the commencement and termination of said road or survey, to be marked on a tree, or monument erected for that purpose; he shall also make out and deliver to one of the viewers, without delay, a correct certified return of the survey of said road, and a plat of the same; and the viewers shall make and sign a report in writing, stating their opinion in favor of or against the establishment or alteration of such road, or any part thereof, and set forth the reasons of the same, which report, together with the plat and survey of said road or alteration, shall be delivered to the county auditor, by one of the viewers, on or before the first day of the session of the commissioners, then next ensuing. And it shall be the duty of the commissioners, on receiving the report of the viewers aforesaid, to cause the same to be publicly read on two different days of the same meeting, and if no legal objection shall be made to them for review of said road, or any part thereof, or alteration, and they are satisfied that such road, or any part thereof, if the same be capable of division, will be of public utility, and the report of the viewers being favorable thereto, and that no damages have been claimed or assessed, they shall, on the third day of the session, cause said reports, survey and plat to be recorded, and from thenceforth said road shall be considered a public highway, and the commissioners shall issue their order to the proper supervisor or supervisors, directing said road to be opened; but if the report of the viewers be against such proposed road or alteration, or if in the opinion of the commissioners, the same shall be unnecessary, then no further proceedings shall be had thereon; and the obligor or obligors, in the

Viewers to report.

Proceedings before the commissioners.

bond securing the costs and expenses, shall be liable for the full amount of such costs and expenses: Provided, that in all cases, where any oath or affirmation is required to be taken by any person under the provisions of this act, the same may be administered by the surveyor or by one of the viewers, or reviewers who have previously been sworn or affirmed themselves.

Oaths—administered by whom.

§ 8. That it shall be the duty of the viewers aforesaid, at the same time at which they are required to make their report of the view, to make a separate report, in writing, stating the amount of damages, (if any,) and to whom, which by them have been assessed, which would accrue by the opening of said road; and they shall also file the written applications on which such assessments have been made, with the county auditor. And the commissioners shall cause the said report to be publicly read on the third day of the session at which it was received, and if no petition for review or alteration shall have been presented and received, and the commissioners shall be satisfied that the amount so assessed and determined be just and equitable, and that the said road will, in their opinion, be of sufficient importance to the public to cause the damages which have been assessed as aforesaid, to be paid by the county, they shall order the same to be paid to the applicant or applicants from the county treasury; but if, in their opinion, the said road is not of sufficient importance to the public to cause the same to be paid by the county, they may refuse to establish the same a public highway, unless the damages which have been assessed are paid by the petitioners.—But if application, by petition, shall have been made for review or alteration, then no further proceeding shall be had on the report till the final determination of the commissioners on the application for review or alteration.

Viewers to report upon damages.

When damages paid by counties.

§ 9. That after the viewers of any county road shall have made return in favor of the same, agreeably to the seventh section of this act, and before said return shall be recorded, and the said road established, it shall be lawful for any citizen of the county to apply to the commissioners for a review of said road, by petition, agreeably to the second section of this act, and the commissioners shall, on such petition being presented, and they being satisfied the same is just and reasonable, appoint five disinterested freeholders of the county to review said road, and issue their order to said reviewers, directing them to meet at a time to be specified in such order, or within five days thereafter; and the said petitioners for review, shall cause at least six days notice to be given to the principal petitioner for said road, of the time and place of the meeting of said reviewers; and the said reviewers shall meet, after having received the notice above required, and after taking the oath or affirmation, required by the sixth section of this act, shall proceed to exam-

Application for review made by any citizen.

Reviewers appointed;

their duties.

Report.

ine the route surveyed for said road by the former viewers, and make a report, in writing, to the commissioners, stating their opinions in favor or against the establishment of said road, or any part thereof and their reasons for the same. And if the report of the reviewers be in favor of said road, the same shall be established, recorded and opened, agreeably to the provisions of this act, and the person or persons bound for the same, shall pay into the county treasury the amount of the costs of such review; but if the report be against the establishment of such road, no further proceedings shall be had thereon before the commissioners, and the persons executing the first bond shall pay into the county treasury the costs and expenses of the view, survey and review of said road.

Costs—by whom paid.**Review and survey.**

§ 10. That when the place of beginning, or true course of any state or county road shall be uncertain, by reason of the removal of any monument or marked tree, by which such road was originally designated, or from any other cause, the county commissioners of the proper county may appoint three disinterested landholders of the county to review and straighten said road, if they shall deem it necessary, and a competent surveyor to survey the same; and said reviewers and surveyor, after taking the oath or affirmation required by the sixth section of this act, shall view and survey said road, and the same correctly mark throughout, as in case of new roads, and shall make a return of said survey, and a plat of said road to the commissioners, who shall cause the same to be recorded, as in other cases; and from thenceforth said road, surveyed as aforesaid, shall be considered a public highway.

How route may be changed by individuals.

§ 11. That if any person or persons, through whose land any state or county road is, or may be established, shall be desirous of turning said road through any other part of his or their land, such person or persons may, by notice and petition, agreeably to the second, third and fourth sections of this act, apply to the commissioners of the county while in session, to permit him or them to turn said road through any other part of his or their land, on as good ground, and without increasing the distance to the injury of the public; and upon the receipt of such petition, the commissioners shall appoint a surveyor, and three disinterested freeholders of the county, as viewers of said road, who shall proceed to view and survey the ground over which said road is proposed to be turned, and ascertain the distance which said road will be increased by such proposed alteration, and make out a report, in writing, stating the several distances so found, together with their opinion as to the utility or inutility of making said alteration, and if said freeholders shall report to the commissioners that the prayer of the petitioner or petitioners is reasonable, and that the alteration will not place the road on worse ground, or increase the distance to the injury of the public, they shall, upon receiving sat-

isfactory evidence that the proposed new road has been opened a legal width, and in all respects made equal to the old road for the convenience of travelers, (if in their opinion the same will be just and reasonable,) declare said new road a public highway, and make record thereof, and, at the same time, vacate so much of the old road as is embraced by the new; and the person or persons desiring the alteration aforesaid, shall pay all the costs of the view, survey and return of said alteration; unless the commissioners shall be satisfied that the alteration is of sufficient advantage to the public to cause the same to be paid by the county.

Costs of
change—how
paid.

§ 12. That when it shall become necessary to establish a road on a county line, the inhabitants along such line may petition the commissioners of their respective counties for a view of such road, in the manner pointed out in the preceding sections of this act; and it shall be the duty of such boards of commissioners, for each of the counties interested, to appoint two discreet landholders as viewers, who, or a majority of them, shall meet at the time and place named in the order of the commissioners of the oldest county interested, who shall appoint a surveyor; and the viewers and surveyor appointed as aforesaid shall also be a jury for the assessment of damages, and shall in all respects be governed by the provisions of the preceding sections of this act; and the viewers and surveyor appointed as aforesaid, shall make their report, in writing, for or against such road, to the commissioners of the counties concerned; and the said commissioners, upon receiving such report, shall, in all respects, be governed by this act.

In what man-
ner roads are
established on
county lines.

§ 13. That if, on receiving such report, and there being no legal objections thereto, and the commissioners of all the counties interested shall be of opinion that such road, if opened, would be of public utility, they shall order the same to be opened in the manner pointed out by this act.

§ 14. That when any road is located and ordered to be opened, as provided for in the twelfth and thirteenth sections of this act, it shall be the duty of the trustees of each of the several townships adjoining such road, to select one from each of their number, whose duty it shall be to meet at some convenient place near the line of the same, (the time and place to be appointed by the oldest township interested,) previous to the time appointed by law for apportioning labor to their respective road districts, and shall assign a sufficient number of persons to open such road and keep the same in repair, dividing the road in such manner that the persons so assigned may work under the orders of the supervisors in the township to which they belong; and the supervisors and persons so assigned, shall be governed by the provisions herein contained.

Duties of trustees of townships concerning such roads

§ 15. That when any county road, or part of any county road, shall be considered useless, any twelve freeholders, resi-

How roads are vacated.

ding in that part of the county where such road is established, may make application, by petition, agreeably to the second and fourth sections of this act, to the commissioners of the county, to vacate the same, setting forth in said petition the reasons why said road ought to be vacated; which petition shall be presented and publicly read at a regular session of the commissioners, and no other proceedings shall be had thereon, until the next session of said commissioners, when it shall again be read as aforesaid; and if no objections be made, the commissioners may declare said road vacated, or any part thereof which they may deem unnecessary to keep open for public convenience; but if objections be made, in writing, agreeably to the second section of this act, the commissioners shall appoint three disinterested persons to view said road, who shall take the same oath or affirmation as required by the sixth section of this act, and proceed to view the road aforesaid, and make report of their opinion thereon, and the reasons for the same, to the commissioners; and if said reviewers shall report in favor of vacating said road, or any part thereof, the commissioners may, if they shall deem it reasonable and just, declare said road vacated, agreeably to the report of the viewers.

**Fines—how
collected.**

§ 16. That if any person, who shall be appointed by the county commissioners, as a viewer, reviewer, or surveyor of any road, shall refuse or neglect to perform the duties required by this act, without making satisfactory excuse for such refusal or neglect, he shall be fined in any sum not exceeding five dollars, to be recovered by action of debt, by any person, suing for the same, before any justice of the peace, within the township, wherein the person so appointed, and refusing or neglecting, may reside; and shall be paid over without delay, by the justice of the peace, or constable collecting the same, to the treasurer of the township, taking his receipt therefor. And the trustees shall cause all fines which shall be paid into the township treasury, under the provisions of this act, to be expended on roads and bridges within their townships.

Compensation

§ 17. That all persons, required to render services under this act shall receive compensation for each day they shall necessarily be employed, as follows, to-wit: views and reviewers, one dollar and fifty cents; chain carriers and markers, one dollar, each; and surveyor, two dollars; to be charged as costs and expenses, and paid out of the county treasury, on the order of the county auditor.

Appeals.

§ 18. That an appeal from the final decision of the commissioners for a new county road, or for vacating, altering or reviewing any state or county road, shall be allowed to the court of common pleas: provided, that notice of such appeal be given by the appellant or appellants during the same session of the commissioners at which said decision was made; and the appellant shall, within fifteen days thereafter, enter into bond with good and sufficient security, to be approved by the county

auditor, for the payment of all costs and expenses arising from such appeal: *Provided*, that minors, idiots and lunatics, or their guardians, may appeal without giving bond; and the court of common pleas may, if in their opinion justice and the interest of the public require the same, order another view or review of such road, or make any other order which they may deem just and reasonable in the case; and the decision of the court of common pleas, in the case removed before them by such appeal, shall be final, and no final order shall issue in any of the cases aforesaid, until after fifteen days shall have expired from the time of making such decision, at which time the auditor shall issue such order, unless an appeal has been perfected agreeably to the provisions of this section.

§ 19. That no writ of certiorari shall be allowed to remove any proceeding had under this act after the lapse of one year from the time of making the final order in such proceeding by the county commissioners.

§ 20. That the decision of the court of common pleas, on petitions for roads, taken into said court by appeal, as provided for in the eighteenth section of this act, together with a plat, survey, or pertinent description of the road as established by said court, shall be certified back to the county auditor, and be by him recorded in his record of roads, and ordered to be opened as in other cases.

Decision of the court of common pleas certified to county commissioners.

§ 21. That for their services required by this act, the auditor and the officers of the court shall each be entitled to the same fees as they are entitled to by law for like services in other cases; the auditor's to be paid out of the county treasury, and the officers' fees of the court to be taxed in the bill of costs in the cause in court.

Officers fees.

§ 22. That an appeal from the final decision of the county commissioners for damages sustained on the petition for any new county road, or for altering any State or county road, as provided for by this act, shall be allowed to the probate court: provided, that notice shall be given and bond filed agreeably to the eighteenth section of this act; and the appellant shall within ten days thereafter, file a transcript of the proceedings had before the commissioners, with the probate judge, who shall immediately issue a writ of summons upon such transcript against the obligors in the bond filed under the second section of this act, which writ shall be served and returned as other writs of like character; and in such suits the appellant shall be plaintiff, and the said obligors defendants.

Appeal to probate courts

§ 23. That upon return of service of such writ, the judge shall issue a venire for a jury of six disinterested citizens of the county, who, after having been sworn faithfully to discharge the duties of their appointment, shall proceed on a day to be named in said venire, to examine personally the line of the proposed road, where it passes through the premises in controversy, and return their decision, in writing, to the pro-

Jury of six citizens—their powers and duties.

bate court, and the judge shall enter the same in the record with the former proceedings, and the decision made and entered on record as aforesaid, shall be final, except as hereinafter provided.

Decision certified to county auditor.

§ 24. That the decision obtained in the probate court, as provided for by the twenty-second and twenty-third sections of this act, shall be certified back to the county auditor, and if the county commissioners shall not deem such road of sufficient importance to the public to cause the expenses incurred and damages assessed in the probate court to be paid by the county, they may refuse to establish the same, unless the parties interested in the location of said road shall pay, or cause to be paid before the opening of said road, to the satisfaction of the county commissioners, in case said road is established a highway, all expenses incurred and damages assessed: provided, however, that it shall be lawful for the commissioners, if in their opinion a part only of said road will be of public utility, to record and establish such useful part and reject the residue, in case it be capable of division.

Costs and damages, how paid.

§ 25. That in case such expenses and damages are paid, or secured to be paid, as aforesaid, or the commissioners direct the same to be paid by the county, then, and in either case, they shall enter an order that said road be established a public highway

The road a public highway.

Officer's fees.

§ 26. That for their services required by the twenty-second, twenty-third and twenty-fourth sections of this act, the officers and other persons required to perform services shall each be entitled to the same fees as they are entitled to by law for like services in other cases, the auditor's to be paid out of the county treasury and the judge and others entitled to fees to be taxed in the bill of costs in the cause in court.

Roads supplied in certain cases.

§ 27. That when any state or county road may be injured or destroyed by the washing of any lake river or creek, it shall be the duty of the trustees of the township in which such injury or loss of road shall have occurred, upon petition of any six freeholders of the township, to call to their aid a competent surveyor, and proceed to examine such road, as may have been thus injured or destroyed; and if upon such examination, said trustees, or a majority of them, shall be satisfied that such road has been destroyed, or so much injured that the public good requires an alteration of the same, they shall proceed to alter and lay out so much of the new road as may supply the several parts of the road thus destroyed or injured: provided, that if any person or persons, through whose lands any such alteration or new road shall be laid out shall feel injured thereby, such person or persons shall make application to the trustees, at the time of making the alteration on his or their premises, to assess and determine, according to the provisions of the fourth section of this act, the compensation to be made in money for the property sought to be appropriated; how much less valua-

By whom damages assessed.

ble, if any, the premises will be rendered by the alteration of said road; and the said trustees and surveyor shall make a report of their doings, in the manner pointed out as the duty of the viewers and surveyor in case of new roads; and the auditor and commissioners of the proper county shall be governed in the reception and recording of said report, in all respects, as is prescribed in this act in cases of new roads.

§ 28. That the surveyors and trustees shall receive for each day they are necessarily employed under the provisions of the twenty-seventh section of this act, the same compensation allowed to surveyors and viewers in case of new roads, the surveyor to be paid out of the county treasury, on the order of the county auditor; and the trustees out of the township treasury, on the order of the township clerk. Compensation

§ 29. That any county road, or part thereof, which has heretofore, or may hereafter be authorized, which shall remain unopened for public use for the space of seven years after the order made or authority granted for opening the same, or the part thereof remaining unopened, shall be, and the same is hereby vacated, and the authority granted for erecting the same barred by lapse of time; and any state road or part of any state road which has heretofore been authorized, which shall remain unopened for public use for the space of ten years after the passage of the act authorizing the same, shall be vacated, and the authority for opening repealed for non-user. County and state roads, when opened.

TOWNSHIP ROADS.

§ 30. That if any person or persons shall, for the convenience of themselves and neighbors, wish to have a township road laid out, from the plantation or dwelling place of any person or persons; or from any mill or house of public worship; or to any public road; or from one public road to intersect another, it shall be lawful for such person or persons to petition the trustees of the proper township, for the same, after giving thirty days previous notice thereof, by advertisement posted up at three public places within said township, setting forth in said advertisement the time when such petition is to be presented, the place of beginning, intermediate points, if any, and place of termination of said road. Proceedings for township roads.

§ 30. That on such petition being presented to the trustees, and they being satisfied that proper notice has been given, as aforesaid, they shall cause the petitioner or petitioners to enter into bond, with sufficient security payable to the State of Ohio, for the use of the township, and conditioned that the person or persons making such application shall pay the amount of all costs and expenses of the view and survey of said road; and the petition shall be read in open meeting of said trustees; and they being satisfied that such proposed road is necessary, they Petitioners to give bond.

Trustees to
appoint a jury
and supervisor.

Compensation
to owners of
land.

Viewers to
report to the
trustees.

Damages,

Width of road.

Supervisor to
keep certain
roads in repair.

Petition, when
not granted.

Appeal to probate
court.

shall appoint three judicious, disinterested landholders of the township, who shall constitute a jury, and a surveyor, who shall, after taking the oath or affirmation required by the sixth section of this act, take to their assistance two chain-carriers, and a marker, and proceed, at the time directed by the trustees, or within three days thereafter, to view the ground along which said road is proposed to be established, and locate the same as near the prayer of the petitioner or petitioners, as a good road can be had at a reasonable expense; and determine according to the provisions of section four, of this act, the compensation which shall be paid to the owner or owners of the land through which it is proposed to establish the same, and the amount of damages he, she, or they may sustain.

§ 32. That the viewers shall make a report, in writing, to the trustees, setting forth their opinion, in full, for or against the establishment of such road, together with a statement of the damages, if any, assessed to each person, through whose land the road is proposed to be established; which report, together with a return and plat of the survey of said road shall be deposited with the township clerk, who shall notify the trustees thereof; whereupon the trustees shall at their next meeting, cause said report to be read, and if the same be in favor of establishing said road, and the trustees deem it reasonable and just, they being satisfied that the damages, if any have been claimed and assessed, have been paid or secured to be paid, by the petitioner or petitioners, the clerk of the township shall enter the said report on record. And the trustees shall issue their order to the petitioner or petitioners, or any of them, to open said road thirty feet wide, and from thenceforth, the road shall be considered a private or township road, subject to be kept open and in repair at the expense of the applicant or applicants for the same: provided, however, that any township road, which commences in a state, turnpike, or county road, and passes on and intersects another state, turnpike, county or township road, leading or terminating in a county, turnpike or state road, shall be opened and kept in repair by the supervisor, in whose district any such township road may be situated in whole or in part; and it shall be the duty of the supervisor to cause so much of the labor of the persons immediately interested in such township road, to be applied to the opening, or keeping such township road in repair, as he may deem reasonable; and the costs of the view and survey of such roads shall be paid out of the township treasury; but if the viewers shall report that the prayer of the petitioner or petitioners is unreasonable and ought not to be granted, no further proceeding shall be had thereon by said trustees; and all costs accruing under the provisions of this section, shall be paid by the person or persons making application for such road, except as herein before provided.

§ 33. That an appeal from the final decision of the trustees of the township, on any petition or report for a road, shall be allowed to the probate court, and the court may order another

view of said road, or make any other order which may be just and reasonable in the case: provided the appellant shall enter into bond to the State of Ohio, for the use of the township, in the sum of one hundred dollars, with one or more good and sufficient sureties to the acceptance of the township treasurer, within fifteen days from the date of the decision of said trustees, conditioned for the payment of all costs and expenses arising from such appeal, if the road shall be established by the proceeding had in the probate court, which appeal shall be entered with the probate judge within six days from the day of the filing of the bond with the township treasurer. And no order shall issue for opening any township road until fifteen days after the same shall have been established, at which time the clerk of the township may issue such order by direction of the trustees, unless an appeal has been perfected, agreeably to the provisions of this section.

Appellant to
give bond.

Clerk to issue
order for open-
ing roads.

§ 34. That the decision obtained in the probate court, as provided for in the foregoing section, shall be certified back to the township clerk, who shall notify the trustees thereof; whereupon the trustees shall dispose of the case agreeably to the order of the probate court, and the probate judge shall be allowed to tax the same fees which are by law allowed for similar services in other cases.

Decision certi-
fied by pro-
bate judge.

§ 35. That whenever any township road shall become useless, any one or more residents of the township may, after giving the same notice required in the thirtieth section of this act, petition the trustees to vacate the same; and if said trustees shall be satisfied that the proper notice has been given, and no injustice will [be] done thereby, they shall, at their next regular meeting, declare the same vacated, and give notice thereof to the township clerk, who shall enter the same on the records of the township.

Township
roads, how va-
cated.

§ 36. That the trustees of any township in this state be and they are hereby authorized, upon petition for that purpose, to alter or change the direction of any township road in their respective townships, in such manner as shall be reasonable and as the public convenience may require.

How changed.

§ 37. That upon application as aforesaid for any alteration or change in any township road, the same proceedings shall be had by and before such trustees in all respects as required by the thirtieth section of this act.

Action of trus-
tees.

§ 38. That the act entitled "an act for opening and regulating roads and highways," passed March fourteenth, one thousand eight hundred and thirty-one, the act entitled "an act to amend the act, entitled 'an act for opening and regulating roads and highways,'" passed March third, one thousand eight hundred and thirty-five; the act entitled "an act further

Acts repealed.

to amend the act, entitled 'an act for opening and regulating roads and highways,' passed February the sixteenth, one thousand eight hundred and thirty-nine; the act, entitled "an act to amend the act for opening and regulating roads and highways," passed March fourteenth, one thousand eight hundred and thirty-six; the act, entitled "an act to amend an act entitled 'an act for opening and regulating roads and highways,'" passed February fifteenth, one thousand eight hundred and forty-four; the act, entitled "an act further to amend the 'act for opening and regulating roads and highways,'" passed March twenty-fifth, one thousand eight hundred and fifty-one; the eleventh and twelfth sections of an act, entitled "an act prescribing the duties of supervisors, and relating to roads and highways," passed March twentieth, one thousand eight hundred and thirty-seven; the act, entitled "an act amendatory of an act, entitled 'an act defining the mode of laying out and establishing township roads,'" passed March eleventh, one thousand eight hundred and thirty-one; also, of an act, entitled 'an act for opening and regulating roads and highways,'" passed February twenty-sixth, one thousand eight hundred and thirty-nine; the act, entitled "an act defining the mode of laying out and establishing township roads," passed March eleventh, one thousand eight hundred and thirty-one; the act, entitled "an act to amend an act entitled 'an act prescribing the duties of supervisors, and relating to roads and highways,'" passed January twenty-ninth, one thousand eight hundred and forty-seven; the act passed March eleventh, one thousand eight hundred and forty-three, entitled "an act to authorize county commissioners in any county in this State adjoining to or bounded by the States of Pennsylvania, Michigan or Indiana, to lay out and establish county roads on the line of this State thirty feet in width;" the act passed March twelfth, one thousand eight hundred and forty-five, entitled "an act in relation to state and county roads;" the act passed February twenty-fifth, one thousand eight hundred and thirty-two, entitled "an act supplementary to an act entitled 'an act for opening and regulating roads and highways,'" the act passed February second, one thousand eight hundred and forty-eight, entitled "an act to amend the act to provide for laying out and opening township roads;" the act passed February eighth, one thousand eight hundred and forty-eight, entitled "an act to authorize the township trustees of any township in this State to make alterations in township roads," be, and they are hereby repealed: Provided, however, the repeal of said acts shall not affect any act done, or any right or liability accruing or accrued, or any suit, matter or proceeding, had or commenced under the provisions of said acts.

Time of taking effect.

§ 39. This act shall take effect and be in force from and

after the first day of March, one thousand eight hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

January 27, 1853.

AN ACT

To provide for the transfer of business from the Superior and Commercial Courts of Cincinnati, to the Court of Common Pleas of Hamilton county: and, also, from the Superior Court of Cleveland to the Court of Common Pleas of Cuyahoga county.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That upon the final adjournment of the superior court of Cincinnati, and commercial court of Cincinnati, on the second Monday of February, one thousand eight hundred and fifty-three, the clerks of said courts shall respectively deliver to the clerk of the court of common pleas of Hamilton county, and the latter shall receive all the original files and other papers in the causes then pending, or before that time disposed of in said superior and commercial courts; also, the records, journals, dockets, executions, orders of sale, and other books, papers and property of said superior and commercial courts.

Concerning the superior and commercial courts of Cincinnati on adjournment.

§ 2. That all causes pending in said superior and commercial courts, on said day of adjournment, shall be arranged on the dockets of said court of common pleas, in such order as said court shall direct, and said causes shall proceed to final disposition in said court as if originally brought therein; and all bills of review, writs of scire facias and of error coram nobis, motions to amend, alter, or set aside judgments, decrees, for new trials, orders or other proceedings, and other motions and applications which shall be rendered proper or necessary by the decrees, orders, judgments, or other proceedings of said superior or commercial court, entered at any time previous to said adjournment, shall be brought in and disposed of by said court of common pleas.

All causes, &c., arranged in common pleas court as the superior and commercial courts shall direct.

§ 3. That where any cause has been disposed of, and a complete record thereof made in either said superior or com-

Business of such courts continued in

common pleas. mercial court on or before said adjournment, but said record has not been signed by the judge of said court, said record shall be examined, and if found correct, signed by any one of the judges of the court of common pleas; and any cause disposed of in either said superior or said commercial court, on or before said adjournment, of which a complete record has not then been made, shall be recorded by the clerk of the court of common pleas, and signed by any one of the judges of said court; and all transcripts of the records of any cause disposed of in said superior or commercial court shall be made and authenticated in the same manner as if said cause had been disposed of in the court of common pleas.

Final process returnable to the common pleas.

§ 4. That all writs of execution, orders for sale in chancery, and other final process issued out of said superior or commercial courts on or after the first Monday in January, A. D., one thousand eight hundred and fifty-three, shall be made returnable to the May term of the court of common pleas then next ensuing. And all orders, rules, writs or processes of any kind, outstanding at the expiration of either said superior or commercial courts, shall be returned to the court of common pleas at its said May term, A. D., one thousand eight hundred and fifty-three, and have the same validity and effect in the said court of common pleas as they would have had in said superior and commercial courts; and all process necessary to carry into effect any judgment, decree, order or other proceeding of said superior or commercial court, shall, after said adjournment, be issued from said court of common pleas in the same manner and have the same effect as if said judgment, decree, order or other proceeding were originally had and entered therein.

Causes disposed of can be removed by appeal, &c., to the district court.

§ 5. That any cause disposed of in said superior or commercial court may be removed to the district court by appeal, writ of error, certiorari, or otherwise, in the same manner as if disposed of in said court of common pleas; and all special mandates, and writs of procedendo, and other writs necessary to carry into effect any judgment which shall have been thereto removed from said superior or commercial court by appeal, writ of error or otherwise, shall, after said adjournment, be directed to, and obeyed by said court of common pleas, in like manner as if said cause had been removed therefrom; but this section shall not be construed so as to deprive the district court of its power to issue process in such causes not directed to an inferior court.

Powers of the district and common pleas court.

§ 6. That the district court and court of common pleas aforesaid, shall have the same powers with respect to the causes pending or disposed of in said superior and commercial courts, at or before said adjournment, and with respect to all the judgments, decrees, orders and other proceedings, and the process of said courts, as said courts respectively would have had had they been continued in existence, and said causes,

judgments, decrees, orders and other proceedings, shall hold and occupy the same position, and have the same effect in law as if originally brought, entered, or had in said court of common pleas.

§ 7. That all cases transferred from said superior and commercial courts to the court of common pleas, in which notice of appeal shall have been entered, but in which the appeal shall not have been perfected, such appeal may be perfected in the said court of common pleas; and when any order or decree of either the superior or commercial courts requires a report or accounts to be rendered to either the said superior or commercial courts after said day, the same shall be made to the court of common pleas, as if the same decree or order had been made in said court of common pleas.

Appeal perfected.

§ 8. That all cases which may have been heretofore brought into the district court, in the county of Hamilton, from said superior or commercial courts, by appeal, writ of error, or certiorari, and which may have been disposed of by said district court, at the expiration of said superior and commercial courts, but which may yet remain to be remanded to the court below for new trial, execution or other proceeding, may be so remanded to the said court of common pleas, which shall proceed as if the same had originated therein.

Certain cases remanded to court of common pleas.

§ 9. That for all services performed under this act by the clerks of the said court of common pleas, and superior and commercial courts, for the compensation of which there is no provision by law, the court of common pleas may allow compensation, to be paid out of the county treasury, not exceeding such amount as would be taxable for like services as prescribed by the act regulating the fees of clerks of courts of common pleas, passed May first, one thousand eight hundred and fifty-two.

Compensation of clerks.

§ 10. That on the final adjournment of the superior court of Cleveland, in the county of Cuyahoga, on the second Monday of February, one thousand eight hundred and fifty-three, the clerk of said court shall deliver to the clerk of the court of common pleas in said county of Cuyahoga, composing the third subdivision in the fourth judicial circuit, and said last mentioned clerk shall receive all the original files and other papers in the causes then pending, or before that time disposed of, in said superior court of Cleveland; and also the record, journals, dockets, executions, orders of sale, and other books, papers, and property of said superior court; and in all further proceedings in relation to the causes or other matters so transferred, the said court of common pleas, or the proper district court, as the case may be, in said subdivision, shall be governed by the provisions of this act in like manner as is required of the court of common pleas of Hamilton county, or district court, in reference to the causes or other matters transferred from the superior and commercial courts of Cincinnati, so far as such pro-

Superior court of Cleveland on adjournment to transfer business to the common pleas.

visions are applicable, and as if the same had been framed so as to apply in specific language to said court of common pleas of Cuyahoga county, or district court in said subdivision.

Clerks of the common pleas of Hamilton county to make an index of judgments, &c.

§ 11. That the clerk of the court of common pleas of Hamilton county, be and he is hereby required to make out with all convenient dispatch, and preserve in his office, a full and complete index of judgments and decrees rendered in the said commercial and superior courts of Cincinnati, and also of those rendered in the court of common pleas of Hamilton county, since the organization of the said courts respectively, both direct and reversed, uniform with the index of judgments and decrees rendered in the supreme court of Hamilton county, heretofore made.

His compensation for same.

§ 12. That for his services in making out the said indexes, the said clerk shall be allowed five cents for each case indexed, and if indexed under more than one name, then five cents additional for each additional name under which it shall be indexed, to be paid out of the county treasury on the order of the county commissioners.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

WILLIAM MEDILL,
President of the Senate.

January 27, 1853.

AN ACT

For the re-organization of the State Library, and to provide for the appointment of Librarian.

State Librarian appointed by the Governor.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be the duty of the Governor of this State, by and with the advice and consent of the Senate, to appoint a State Librarian, who shall hold his office for two years, and until his successor shall be appointed and qualified.

To give bond.

§ 2. The librarian, before he enters upon the discharge of his official duties, shall give a bond in the penal sum of ten thousand dollars, with good and sufficient security, to be approved by the Governor, made payable to the State of Ohio, conditioned that he shall faithfully discharge the duties of libra-

rian, and deliver over to his successor in office all books and other property belonging to the state library, according to law, and such rules and regulations as may be adopted by the General Assembly.

§ 3. That said librarian shall execute and deliver a receipt to the treasurer of state, for all books, maps and other property belonging to the state library, or which may hereafter be purchased for or presented to said library, specifying in said receipt each book or set of books, map, or article of property separately, which receipt, with the bond given by said librarian, shall be filed in the treasurer's office, and the librarian be held accountable for all said property ; and in case of the death, resignation or removal from office of the librarian, all books, maps and other property belonging to the library, shall immediately be delivered to his successor in office, taking his receipt for the same, which shall be filed with the state treasurer, and a credit shall be entered on the receipt of the former librarian accordingly ; but neither the receipt nor the bond of the librarian shall be given up or cancelled, unless the whole property in his hands shall have been accounted for according to law and the rules and regulations for the government of the state library.

Receipts for books and maps delivered to the Secretary of State.

§ 4. The librarian may be removed by joint resolution of the General Assembly, for sufficient cause, which shall be specified in such resolution.

Librarian may be removed.

§ 5. That the resignation of the librarian shall be made to the Governor, who is hereby authorized to appoint a librarian in all cases where a vacancy shall happen during the recess of the General Assembly, and the person so appointed shall give the same bond, sign the same receipt, and discharge all the duties appertaining to said office in the same manner as though he had been appointed according to the provisions of the first section of this act, and he shall hold his office until the next session of the General Assembly, and until his successor shall be appointed and qualified.

Vacancy, how filled.

§ 6. That the State library shall be under the management of a board of commissioners, consisting of the Governor, Secretary of State, and State Librarian.

Board of commissioners.

§ 7. That the commissioners of the library shall have power to adopt any rules and regulations proper or necessary for the preservation, regulation and increase of the library, not inconsistent with the law, which the librarian shall in all things observe, and to superintend and direct all expenditures of appropriations made for the library.

To make rules, &c.

§ 8. That the said board of commissioners shall control the sale of the reports of the supreme court, and all extra copies of statistics and other documents not otherwise appropriated or otherwise advisable to be preserved and kept in the library, and for the purpose of making such sale, the commissioners may appoint a suitable person upon such terms as they shall

Further duties of said board.

deem best, from whom they shall take a bond with satisfactory surety, conditioned for the faithful performance of his duty, and paying over the proceeds of the sales by him (made,) and the commissioners shall apply the proceeds of such sales to the increase and preservation of the library.

Exchanging
statutes, &c.

§ 9. The commissioners shall direct the librarian to exchange statutes, journals, legislative documents and other books with other legislative bodies and libraries, as they shall deem proper.

Who may take
books from the
library.

§ 10. All persons shall be permitted to visit the library and examine and read the books there, without taking the same therefrom, under such regulations as the board of commissioners shall prescribe. Members and ex-members of the General Assembly, judges of the supreme court, and court of common pleas, officers of state and their clerks actually engaged in the service of the state, and clerks and sergeants-at-arms of the General assembly, shall have free access to the use of the books of the library, and have the liberty of taking the same out under such regulations as the commissioners may determine; but no public officer or other person having a right to take books out of the library, shall have the authority to give any other person an order to take books out of the same, and if any person having such right shall give such order, or otherwise obtain books out of the library to be used by any other person not having such right, such person shall thereupon forfeit all right to take books therefrom.

Commission-
ers to report
to the Gover-
nor.

§ 11. That the commissioners of the state library shall, five days preceding the commencement of each regular session of the General Assembly, make a report to the Governor, of all receipts and expenditures, and of the condition of the library, and all other matters in relation thereto that they may deem expedient for the information of the General Assembly; and said report shall be communicated by the Governor to the General Assembly, along with the reports of the executive departments and state institutions.

Acts repealed.

§ 12. That the act entitled "An act relating to the State Library," passed January 20, 1824, and the act to regulate the State library, passed March 6th, 1845, be and the same are hereby repealed.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 27, 1853.

AN ACT

Supplementary to an act entitled "An act to provide for the creation and regulation of Incorporated Companies in the State of Ohio," passed May 1, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That in case of accident or unforeseen circumstances, any incorporated railroad or plank road company shall be unable to complete its road within the time limited by its charter, and there shall not be time sufficient remaining to give thirty days notice of the filing of the petition, as required in the seventy-sixth section of the act to which this act is supplementary, or if no regular term of the court of common pleas shall be held in the county where the principal office of such company is kept, before the expiration of the time so limited for the completion of the improvement, it shall be lawful for the judge of said court in vacation, on the petition of such company to extend the time for the completion thereof, to the next regular term of said court. The allowance by said judge shall be endorsed upon the back of said petition, which shall be forthwith filed in the clerk's office of said court of common pleas, and notice thereof shall be given as required in the seventy-sixth section of the act above referred to ; and the court of common pleas, at the next regular term thereof, upon proof of the due publication of notice, and on good cause shown, may extend the time for the completion of said improvement to such period as may appear to such court just and reasonable.

Extension of
time for com-
pleting roads.

Application
by petition.

Petition filed
in clerk's
office.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 27, 1853.

AN ACT

Supplementary to the act for the relief of Insolvent Debtors.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That any person who may be imprisoned under any process issued from any of the courts of this State, for the col-

Concerning
insolvent
debtors.

lection of any fine or penalty imposed by virtue of any law of this State for the punishment of any offence, shall be entitled to all the benefit of the act entitled "An act for the relief of Insolvent Debtors," and of any law amendatory thereof, in the same manner as though the amount of said fine, penalty or costs had been recovered against such person in any civil action; *Provided*, that the judgment defendant shall not be entitled to the benefit of this act until the expiration of sixty days imprisonment on such judgment, unless the court rendering said judgment, or any judge thereof in vacation, shall otherwise direct.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 1, 1853.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in the several counties of the Third Judicial District of Ohio.

Terms of the
common pleas
third judicial
district

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the terms of the courts of common pleas shall be holden in the several counties in the Third Judicial District as follows :

FIRST SUBDIVISION.

First subdivi-
sion.

§ 2. In the county of Hardin, on the first day of March, the sixth day of June, and the thirty-first day of October.

In the county of Marion, on the eighth day of March, the thirteenth day of June, and on the seventh day of November.

In the county of Union, on the twenty-first day of March, the twenty-third day of June, and on the twenty-first day of November.

In the county of Logan, on the fourth day of April, the first day of August, and on the fifth day of December.

In the county of Shelby, on the eighteenth day of April, the fifth day of July, and on the third day of October.

In the county of Auglaize, on the second day of May, the eleventh day of July, and on the seventeenth day of October.

In the county of Allen, on the ninth day of May, and on the twenty-fourth day of October.

SECOND SUBDIVISION.

§ 3. In the county of Putnam, on the twenty-second day of March, and the twenty-seventh day of September. Second subdivision.

In the county of Defiance, on the fourth day of April, and the twenty-fourth day of October.

In the county of Williams, on the nineteenth day of April, and the eighteenth day of October.

In the county of Paulding, on the twenty-sixth day of April, and the fourth day of October.

In the county of Van Wert, on the third day of May, and the fourteenth day of November.

In the county of Mercer, on the ninth day of May, and the seventh day of November.

In the county of Henry, on the twenty-third day of May, and the twelfth day of October.

In the county of Fulton, on the seventh day of June, and the twenty-second day of November.

THIRD SUBDIVISION.

§ 4. In the county of Wood, on the twenty-eighth day of February, thirteenth day of June, and twenty-sixth day of September. Third subdivision.

In the county of Hancock, on the seventh day of March, twentieth day of June, and third day of October.

In the county of Wyandot, on the fourteenth day of March, twenty-seventh day of June, and tenth day of October.

In the county of Crawford, on the twenty-first day of March, fifth day of July, and seventeenth day of October.

In the county of Seneca, on the eleventh day of April, twelfth day of July, and thirty-first day of October.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 5, 1853.

AN ACT

To fix and provide for holding the terms of the Court of Common Pleas in the Sixth Judicial District of Ohio.

Terms of the
common pleas
in the sixth
judicial dis-
trict.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the court of common pleas shall be holden in the several counties of the Sixth Judicial District as follows:

FIRST SUBDIVISION.

First subdivi-
sion.

In the county of Delaware, on the last Monday of February, the first Monday of May, and the second Monday of September.

In the county of Licking, on the second Monday of April, the third Monday of August, and the fifth Monday of October.

In the county of Knox, on the fourth Monday of March, the fifth Monday of August, and the third Monday of November.

SECOND SUBDIVISION.

Second.

In the county of Morrow, on the third Monday of February, the first Monday of May, and the fourth Monday of September.

In the county of Ashland, on the first Monday of March, the fifth Monday of August, and the first Monday of November.

In the county of Richland, on the fourth Monday of March, the second Monday of September, and the fourth Monday of November.

THIRD SUBDIVISION.

Third.

In the county of Coshocton, on the first Tuesday of March, the fifth Tuesday of August, and the first Tuesday of November.

In the county of Holmes, on the second Monday of March, the second Monday of September, and the second Monday of November.

In the county of Wayne, on the fourth Monday of March,

the fourth Monday of September, and the fourth Monday of November.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

February 5, 1853.

AN ACT

To repeal the thirty-ninth section of the act entitled "An act for opening and regulating Roads and Highways," passed January twenty-seven, one thousand eight hundred and fifty-three.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the thirty-ninth section of the act entitled "an act for opening and regulating roads and highways," passed January twenty-seven, one thousand eight hundred and fifty-three, which reads as follows: "This act shall take effect and be in force from and after the first day of March, one thousand eight hundred and fifty-three," be, and the same is hereby repealed. 51 O. L., 316,
§ 39.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

February 7, 1853.

AN ACT

To fix and provide for the terms of the District Courts, in the Third Circuit, being composed of the Fifth and Seventh Common Pleas Districts of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the district court shall be holden in Terms of the
district courts

in the third circuit, composed of 5th and 7th common pleas districts.

the several counties composing the Fifth and Seventh common pleas districts of Ohio, as follows:

In the county of Washington, on the fourteenth day of April.
 In the county of Meigs, on the twentieth day of April.
 In the county of Gallia, on the twenty-second day of April.
 In the county of Lawrence, on the twenty-fifth day of April.
 In the county of Scioto, on the twenty-seventh day of April.
 In the county of Adams, on the second day of May.
 In the county of Brown, on the fifth day of May.
 In the county of Clermont, on the eleventh day of May.
 In the county of Highland, on the eighteenth day of May.
 In the county of Fayette, on the twenty-first day of May.
 In the county of Perry, on the first day of September.
 In the county of Fairfield, on the fifth day of September.
 In the county of Hocking, on the ninth day of September.
 In the county of Athens, on the twelfth day of September.
 In the county of Vinton, on the fourteenth day of September.
 In the county of Jackson, on the sixteenth day of September.
 In the county of Pike, on the nineteenth day of September.
 In the county of Ross, on the twenty-first day of September.
 In the county of Pickaway, on the twenty-sixth day of September.
 In the county of Franklin, on the twenty-ninth day of September.

In the county of Madison, on the fourth day of October.

Special terms

§ 2. If, from any cause, a failure to hold the prescribed terms of the district court in any of the foregoing counties should occur, it shall be the duty of the judges of the district court, on giving thirty days previous notice in such county, to hold a special term of the district court in such county, within the same year, to dispose of the business pending; and should important business arise in the district court, in any of said counties, which cannot be disposed of at the stated term of the court for want of time, it shall be lawful for the judges of the district court, to hold a special term of the district court in such county, at such time as they shall determine, on giving thirty days previous notice thereof in the county.

§ 3. Should any day named herein for the holding of the said district court fall upon Sunday, said court shall commence and be holden on the next day.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

February 9, 1853.

AN ACT

To fix and provide for the terms of the Court of Common Pleas in the several counties of the second Judicial District of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the court of common pleas shall be holden in the several counties of the second judicial district of Ohio as follows: Terms of the common pleas in the second judicial district.

FIRST SUBDIVISION.

In the county of Butler on the fourth Tuesday of February the first Tuesday of August and the third Tuesday of October. First subdivision.

In the county of Darke on the fourth Tuesday of March, the last Tuesday of August and the third Tuesday of November.

In the county of Preble on the second Tuesday of April, the third Tuesday of September and the first Tuesday of December.

SECOND SUBDIVISION.

§ 2. In the county of Miami on the first Tuesday of March, the third Monday of August and the first Monday of November. Second.

In the county of Champaign on the second Monday of March, the first Monday of August, and the fourth Monday of October.

In the county of Montgomery on the first Tuesday of April, the last Tuesday of August and the fourth Tuesday of November.

THIRD SUBDIVISION.

§ 3. In the county of Clark on the fourth Monday of April, the third Monday of July and the third Monday of October. Third.

In the county of Greene on the third Tuesday of March, the first Tuesday of August and the first Tuesday of November.

In the county of Clinton on the last Tuesday of March, the third Tuesday of August and the third Tuesday of November.

In the county of Warren on the second Tuesday of April, the last Tuesday of August and the last Tuesday of November.

§ 4. That whenever the state of business shall require it, or when it may become necessary from any other good cause, Special terms, when held.

the judge of either of said court of common pleas may appoint and hold an adjourned term for the purpose of completing the business of any regular term, notice thereof having first been entered upon the journals of the court at the regular term at which such adjourned session shall be appointed, and each of such judges shall also have power to hold a special term of court within and for any county in his proper subdivision when the same shall be necessary for the transaction of either law, chancery or criminal business, and when he shall determine to appoint such special term he shall issue his written order to the clerk of the proper county, specifying therein the time at which such special term shall begin and the object for which the same shall be called, such order shall be issued to the clerk at least three weeks prior to the time fixed for the commencement of such special term, who shall forthwith cause the same to be published in some newspaper of the county, and shall also post up in his office a notice thereof, and shall proceed to perform such duties as may be necessary in view of such special term, and the nature and character of the business to be transacted, and all business done at such special or adjourned term shall be as valid as if transacted at a regular term provided for by the Legislature.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 9, 1853.

AN ACT

To provide for the organization of the General Assembly.

Duties of the
Secretary of
State.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That immediately previous to any regular, adjourned or called session of the General Assembly, it shall be the duty of the Secretary of State to cause the halls in which the Senate and House of Representatives are expected to hold their session, to be suitably prepared for that purpose.

Evidence of
membership.

§ 2. That the certificate of election, from the clerk of the court of common pleas, of the proper county, shall be held and considered as prima facie evidence of the right to membership

of the person certified therein, to be elected for all purposes of organization of either branch of the General Assembly.

§ 3. That at the hour of ten o'clock a. m., on the day appointed for the convening of any regular session of the General Assembly, the President of the Senate, or in case of his absence or inability, then the oldest member present shall take the chair and call the members elect to order, and shall appoint from the members a clerk pro tem.; the President or Chairman, shall then call over the Senatorial Districts in their order, and as the same are called the persons claiming to be members shall present their certificates and take an oath or affirmation to support the Constitution of the United States and of the State of Ohio, and also an oath of office, which may be administered by the President of the Senate, or by any person authorized to administer oaths.

Organization
of the Senate.

§ 4. That after the members elect shall have taken the oath of office, or affirmation aforesaid, if there shall be a quorum present, the Senate shall proceed to the election of a clerk, and a first and second assistant; a sergeant-at arms, a first and second assistant, and the election shall be in the order as above stated in this section, and shall be by a viva voce vote.

Officers of the
Senate, how
elected.

§ 5. That the clerks and sergeant-at-arms shall hold their office for and during the session at which they are elected, but may be discharged by a resolution of the Senate; the clerks and sergeant-at-arms shall control and direct the assistants in their respective departments.

Concerning
the officers.

§ 6. At the same time that is provided for the Senate being called to order, it shall be the duty of the Secretary of State, and in case of his absence or inability, then the Auditor of State, in the Hall of the House of Representatives, to call the persons elect to that body to order, and appoint from those elect a clerk pro tem.; the several counties of the State and districts shall then be called over by the Chairman in alphabetical order, and as the counties of members elect are called, they shall present their certificates, and take an oath or affirmation to support the Constitution of the United States and of the State of Ohio, and also an oath of office.

Organization
of the House.

§ 7. So soon as all the members elect present shall have taken the oath or affirmation aforesaid, if there shall be a quorum, they shall proceed to the election of a Speaker, a clerk and two assistants, a sergeant-at-arms and two assistants; and no additional officers shall be elected or appointed in either branch of the General Assembly during the first two weeks of the session, and none after that time unless upon application of either the clerk or sergeant-at-arms, in which they shall state the additional number they deem necessary, and if either branch shall pass a resolution that such additional clerk or clerks, or sergeant-at-arms are necessary, then such branch, passing such resolution, may proceed to the election of such additional clerk or clerks, sergeant or sergeants-at-arms.

How Officers
of the House
elected.

Officers to
take an oath.

§ 8. That the clerks and sergeants-at-arms shall take an oath to support the Constitution of the United States and of the State of Ohio, and that they will faithfully and diligently discharge the duties required of them in their respective offices.

Term of office.

§ 9. That the clerk and sergeant-at-arms of the House of Representatives shall hold their office for the same time, and be removed in like manner as is provided for the same offices in the Senate.

Messenger
boys.

§ 10. The President of the Senate shall appoint three messenger boys, and the Speaker of the House five, who shall serve during the session of the General Assembly, unless sooner discharged for cause.

Election for
officers.

§ 11. That in all elections for officers of either branch of the General Assembly, a majority of all the votes given shall be necessary to a choice. But in case no choice shall have been made, on or before the tenth vote, then after that the person having the highest number of votes shall be declared to be duly elected.

Duty of ser-
geant-at-arms
concerning
absent mem-
bers.

§ 12. That whenever at the commencement of, or during a regular, adjourned or called session of the General Assembly, upon a call of either House, it shall be found that no quorum of members is present, or if any member or members shall be found absent upon any such call, the members present shall be authorized to direct the sergeant-at-arms, or if there shall be no sergeant-at-arms of such House, then any other person, to compel the attendance of any or all absentees; provided, that if the House refuse to excuse such absentee, he shall not be entitled to any per diem during such absence, and shall be liable for the expenses incurred in procuring his attendance, all of which shall be deducted out of the certificate for the compensation of such member.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 9, 1853.

AN ACT

To regulate Railroad Mortgages.

Railroad com-
panies may
execute mort-
gages.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all cases where any railroad company organized, or hereafter to be organized, under any law of this State, or

owning any real and personal estate therein, which has by virtue of any special provisions in its charter, of the act "regulating railroads," passed February 11, 1848, or of the act "to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852, authority to borrow money, and to secure the payment thereof, to pledge the property and income of such company, every such company may execute a deed of mortgage, or other instrument in writing, for the purpose of securing the payment of the loan of money so made, or the notes, bonds, or other evidences of indebtedness that may be so issued by said company therefor, which said mortgage may include the personal as well as the real property of said company.

§ 2. That in all cases where a mortgage has been or may hereafter be executed upon any portion of the personal and real property of any railroad company within this State, by the proper officers of the same, to secure the payment of any loans of money, or advances of material or labor made to said company, it shall be held to be a sufficient record of the same, to have the same recorded in the office of the Recorder of Deeds, in each of the counties in which said real or personal property may be situated or employed, and said mortgage so recorded, shall be held to be a good and substantial lien from the date of the record of the same in each county where the same is recorded, as well upon the personal, as the real property of said company.

When recorded in recorders office, evidence of debt.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.


February 9, 1853.

AN ACT

Supplementary to the act entitled "An act for the encouragement of Agriculture," passed February 28, 1846.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That all county agricultural societies which have been, or may hereafter be organized under the act to which this is supplemental, be and the same are hereby declared bodies cor-

Agricultural societies, bodies corporate.



porate and politic, and as such shall be capable of suing and being sued, and capable of holding in fee simple such real estate as they may have heretofore, or shall hereafter purchase as sites whereon to hold their fairs.

Such bodies
may purchase
certain real
estate.

§ 2. That all deeds, conveyances and other agreements in writing made to and by such county agricultural societies for the purchase of real estate as sites whereon to hold their fairs, shall be good and valid in law and equity, and shall vest a title in fee simple in such societies to said real estate without words of inheritance.

Commission-
ers may pay
for such sites.

§ 3. In all cases where such county agricultural societies shall have heretofore purchased or shall hereafter purchase real estate as sites whereon to hold their fairs, the county commissioners of such counties may, if they think it for the interest of the counties and societies, pay out of the county treasuries of such counties the same amount of money, for the purpose of the purchase and improvement of such sites, as shall have been or shall hereafter be paid by said agricultural societies or individuals for such purpose.

When socie-
ties are dis-
solved.

§ 4. In all cases where agricultural societies shall be dissolved or cease to exist in any county where payments have been made for real estate, or improvements upon such real estate, for the use of any agricultural society, then all such real estate and improvements shall vest in fee simple to the county making such payments.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 15, 1853.

AN ACT

Prescribing the duties of Supervisors, and relating to Roads and Highways.

Who shall be
required to
work on pub-
lic roads.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That all male persons between twenty-one and fifty-five years of age, who have resided three months in this State, and who are not a township charge, shall be liable, yearly and every year, to do and perform two days work on the public roads, under the direction of the supervisor, within whose district they may respectively reside.

§ 2. That it shall be the duty of every supervisor to order out every such person, resident as aforesaid, between the first day of April and the first day of October, annually, to do and perform the work aforesaid, on the public roads within his district; and if any such resident being personally warned, by the supervisor, or by leaving a written notice at his usual place of abode, or by some person under the direction of the supervisor, by whom such warning can be proven, shall refuse or neglect, having had at least three days' notice, to attend by himself or substitute, to the acceptance of the supervisor, on the day and at the time and place directed by the supervisor, or, having attended, shall refuse to obey the directions of the supervisor, or shall spend the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay for neglect to attend, or for any of the offences above specified, the sum of one dollar, for every such offence, to be recovered by action, before any justice of the peace of the proper township, at the suit of the supervisor within whose district he may reside; and the money so collected shall be applied by said supervisor to the improvement of the road in his district, and accounted for by him at the annual settlement with the trustees of his township: *Provided*, that no person shall be released from the performance of labor on the public highway, by reason of the neglect of any supervisor to order out such person on or before the first day of October.

The powers and duties of supervisors.

§ 3. That in case any person shall remove from one district to another, who has, prior to such removal, performed the whole or any part of the labor aforesaid, or in any other way has paid the whole or any part of the amount aforesaid, in lieu of such labor, and shall produce a certificate of the same from the supervisor of the proper district, such certificate shall be a complete discharge for the amount therein specified.

On persons removing to another district.

§ 4. That every person called upon to perform any labor upon the public roads and highways, under any provisions of this act, shall, by himself or substitute, appear at the place appointed by the supervisor, at the hour of seven o'clock in the forenoon, with such necessary tools and implements as said supervisor may direct, and the supervisor may, if necessary for the improvement of the roads, order any person owning the same, to furnish a team of horses, mules, or oxen and wagon, cart, scraper or plow, to be employed and used on the roads under the direction of said supervisor, who shall allow such person a reasonable compensation for the use of such team, wagon, cart, scraper or plow, in discharge of any labor or tax due from said person.

Every person required to work, must attend in person or by substitute.

§ 5. That all persons who may be deemed by the supervisor unable to perform, or cause to be performed, the two days work required by this act, shall be exempted from the requisitions of the same.

Who may be exempted.

Place of residence.

§ 6. That for the purposes provided for in the preceding sections of this act, the residence of any person who has a family shall be held to be where his family resides: and the residence of any other person shall be held to be where he boards in any road district in this State.

Money received instead of work.

§ 7. That wherever it shall happen in consequence of sickness, absence from home, or any other cause, that the two days labor aforesaid shall not be performed within the time specified in this act, the supervisor shall be authorized to require the performance of such work, at any other time prior to the first day of November then next ensuing: *Provided*, that such delinquent may discharge the same, by paying to the supervisor the sum of one dollar and fifty cents, who shall appropriate it agreeably to the second section of this act.

Townships divided into road districts.

§ 8. That the trustees of townships shall, on the first Monday of March annually, divide their respective townships into suitable and convenient road districts, and if the same have not heretofore been so divided, cause a brief description of the same to be entered on the township records, and also cause each supervisor to be furnished with a rough plat of his district, and in case any public road is, or shall be established, as a part of the line or boundary of any township, the trustees in the adjoining townships shall meet at some convenient place, as soon after the first Monday of March as convenient, and apportion such road or roads between the two townships as justice and equity may require, for the purpose of opening and improving the same, and the supervisors and inhabitants of each township shall be bound to work or [on] said road or roads accordingly.

Supervisors to collect fines and penalties.

§ 9. That the several supervisors within their respective districts shall collect, by suit or otherwise, all fines, forfeitures and penalties, arising and accruing under the provisions of this act, unless the collection thereof is otherwise herein provided for, and they are hereby authorized and required, before their settlement with the township trustees, to prosecute to final judgment all persons neglecting or refusing to comply with the provisions of this act from whom such fine, forfeiture or penalty, in the opinion of the supervisor, can be collected by execution, and the said judgments, if not paid, together with the costs thereon, shall remain and be in force against the judgment-debtor, as other judgments at law are, in case of debt: *provided*, however, that all persons who are, or may be exempt from performing labor on the public highways by any law of this State, shall not be subjected to the provisions of this section.

Moneys so collected expended for the benefit of roads.

§ 10. That the several supervisors shall expend all moneys by them collected for the benefit of the roads and highways, in the proper districts, by the supervisors collecting the same; and every supervisor is hereby required to account to the trus-

tees of the township, at the annual settlement, for all moneys expended under this act; and they shall also return a full and true list and statement of the names of all persons within their respective districts who have been ordered out to perform the two days labor, as required by this act, and who have refused or neglected to perform the same; and all fines and forfeitures sued for, and recovered under the provisions of this act, by a supervisor, shall be paid over, on demand, by the justice of the peace or constable collecting the same, to the supervisor of such road district, wherein such fine or forfeiture accrued, and the several supervisors shall also render an account to the trustees at the annual settlement, of all moneys that remain in their hands at the time of settlement; also, all judgments that remain unpaid and the name of the judgment debtor, and the justice before whom such judgments were obtained, with the amount thereof, and the trustees shall make such order as to the prosecution of suits by the supervisors of the proper districts, against such delinquents, as in the judgment of the trustees the interest of the township may require.

Supervisors to account to the trustees.

§ 11. That all moneys that may remain in the hands of any supervisor at the time of the annual settlement with the township trustees shall be paid over to his successor in office, as soon as such successor shall be elected and qualified, and be by him expended for the benefit of roads and highways, as provided for in the foregoing section. And it shall be lawful for any supervisor, to sue out executions on any judgments that remain unpaid, within his proper district, at any time when, in his opinion, the same can be collected, and the money so collected, (if any there be,) shall be expended, as provided in the foregoing section.

Further duties of supervisors.

§ 12. That it shall be the duty of each and every supervisor to open, or cause to be opened, all public roads and highways which shall have been, or may hereafter be laid out and established through any part of the district assigned to such supervisor; the same to keep in repair, and remove, or cause to be removed, all obstructions that may, from time to time, be found thereon; for which purpose the supervisors are hereby authorized to enter upon any uncultivated lands, unencumbered by a crop, near or adjoining the public roads, to cut and carry away any timber, to dig, or cause to be dug and carried away, any gravel, sand or stone, which may be necessary to improve or repair said road; and to enter on any lands adjoining or lying near the road, to make such drains or ditches through the same, as they may deem necessary for the benefit of the roads, doing as little injury to said lands and timber, as the nature of the case and the public good will permit; and the drains and ditches so made, shall be kept open by said supervisors, if necessary, and shall not be obstructed by the owner or occupier of such lands or any other person or persons, under the pen-

To open roads that are laid out.

Drains and ditches.

alty of forfeiting a sum not exceeding ten dollars for each and every offence, to be recovered and appropriated as provided for in the ninth and tenth sections of this act.

Concerning
obstructions,
&c.

§ 13. That if any person, body politic or corporate, shall obstruct any public road or highway, authorized by any laws of this State, and suffer such obstruction to remain to the hindrance or inconvenience of persons making use of such public road or highway, or shall, by virtue of any authority whatever or otherwise, change the line, fill up, or dig out the bed of any such road or highway, or in any other manner render the same less convenient or useful than it had been previously thereto, such person, body corporate or politic, shall be subject to an action on the case, at the suit of the commissioners of the county, or supervisors in any district, or any person who shall be injured by such obstruction in which such road or highway is situate in whole or in part, and when any person obstructing any road or highway, as aforesaid, shall suffer such obstruction to remain for more than twenty-four hours after being notified to remove the same, every such person shall be deemed guilty of an additional offence against the provisions of this act, and shall be liable to suit or suits aforesaid.

When injunc-
tion allowed.

§ 14. That the commissioners of any county, or supervisors of any district, in which any such road or highway is situate, in whole or in part, shall also have the right to apply to any judge of a court of record, for an injunction to restrain the commission of any injury contemplated by the thirteenth section of this act, and the same shall be granted or refused according to justice and equity; which writ, when allowed, shall be made returnable to the court of common pleas of the county in which such injury is done or contemplated.

Change of offi-
cers not to af-
fect suit.

§ 15. That any suit brought under the provisions of this act, in the official capacity of any such commissioners, or supervisors respectively, shall not abate by the change of officers, but shall be prosecuted by their successors, the same as if no change had taken place, to final judgment, unless otherwise disposed of.

Measure of
damages.

§ 16. That the measure of damages in any suit brought, under the provisions of the thirteenth section of this act, shall be a full compensation to the public for the loss of, or injury to, such road or highway, and the damages recovered in any such suit, after paying the expenses of the same, shall be a trust fund in the hands of such commissioners, or supervisors respectively, to be applied to the repair of such road or highway, or to be expended upon the public roads of such district or county, as justice or equity may require.

Alleys, streets
&c., public
highways.

§ 17. That all avenues, streets and alleys, in villages, towns and cities, which are or may be laid out agreeably to law, shall be, and the same are hereby declared public highways, for every purpose, whatsoever; provided, that the mu-

municipal authorities of any incorporated city, town or village, may make, ordain and enforce such laws and ordinances concerning the side-walks of the streets of such city, town, or village as shall be deemed necessary to prevent such side-walks from being used for the passage of horses, wagons, or other carriages, or for hitching or standing horses, or other animals thereon.

§ 18. That if any person or persons, corporations or any conductor of any train of railroad cars, or any other agent or servant of any railroad company shall obstruct unnecessarily any public road or highway authorized by any law of this State, by permitting any railroad car or cars, timber, lumber, wood or other obstruction to remain upon or across any such road or highway, to the hindrance or inconvenience of travelers or any person or persons passing along or upon such road or highway, every person or corporation so offending shall forfeit and pay for every such offence any sum not exceeding twenty nor less than two dollars, and shall be liable for all damages arising to any person from such obstruction or injury to such road or highway, to be recovered by an action at the suit of the supervisor of the district in which such offence shall have been committed, or any person suing for the same, before any justice of the peace within the county where such offence shall have been committed, or by indictment in the court of common pleas of the proper county, and all fines accruing under the provisions of this section, when collected, shall be paid over to the supervisor of the district in which such offence was committed, and by him applied to the improvement of the roads and highways therein and accounted for in his annual settlement with the trustees, and every twenty-four hours such corporation, person or persons as aforesaid, after being notified, shall suffer such obstruction unnecessarily to remain to the hindrance or inconvenience of travelers or any person or persons going along or upon such road or highway, shall be deemed an additional offence against the provisions of this section.

Obstructing
highway—
penalty.

§ 19. That every railroad company or other corporation shall be liable for all fines assessed against such company or corporation for any obstruction caused by the conductors of railroad cars, agents or servants of any such railroad company or other corporation, for violations of any of the provisions of the last preceding section, and it shall be lawful for any officer having process in his hands to collect any fine or fines assessed against such company or corporation caused by the conductors of railroad cars or any agent or servant of any such company or corporation to levy upon any property of such railroad company or corporation found in the county where such offence was committed, and sell the same in the same manner as is provided for the sale of personal property levied upon by execution.

Liability of
companies &
corporations.

Supervisors to
certify to ma-
terials for re-
pair of roads.

§ 20. That each and every supervisor who shall cut any timber or take away any timber, stone or gravel for the purpose of repairing any road, or the building or repairing any bridge or crossways within his district, shall, on demand of the owner or owners, their agent or agents, or the guardian or guardians of any minor, idiot or lunatic, of the premises from which such timber, stone or gravel shall have been taken as aforesaid, give a certificate, showing the quantity and quality of such timber, the number of loads of stone or gravel, with the value thereof respectively, and the time the same shall have been taken.

Such materi-
als paid for by
the county if
just.

§ 21. That any person or persons who shall receive a certificate, as provided for in the foregoing section, shall present the same to the county commissioners of the proper county at any regular session of said commissioners, within six months after the taking and carrying away of such timber, stone or gravel, and the commissioners being satisfied that the amount of damages, certified as aforesaid, be just and equitable, shall cause the same to be paid out of the county treasury. But if the commissioners shall be of opinion that the amount of damages, as certified to by the supervisor ought not to be paid by the county, they may refuse to pay the same, in which case they shall determine what sum, in their opinion, would be just. But if the applicant for the payment of damages shall refuse to receive the amount certified to by the supervisor, or the amount determined on by the commissioners, then, and in either case, the commissioners shall require the said applicant to enter into bond with good and sufficient security, made payable to the State of Ohio, for the use of the county, conditioned for the the payment of all costs and expenses that may accrue on a view for the assessment of damages.

Jury assess
damages.

§ 22. That on the filing of the bond as provided for in the foregoing section, the commissioners shall appoint a jury of three disinterested citizens of the county, who shall, after first taking an oath or affirmation to faithfully discharge the duties of their appointment, proceed on a day to be named in the order of the commissioners, or on a failure to meet on said day, within five days thereafter, to view and examine the matter complained of, and assess and determine the damages, if any, and return their decision, in writing, to the auditor of the county, on or before the first day of the next regular session of the commissioners. But if upon actual view of the premises the jury shall be of opinion that the amount of damages are not greater than the amount proposed to be paid by the commissioners, then the obligor or obligors in the bond filed with the commissioners, shall pay all the costs and expenses accruing under the view.

Land holders
to construct
passway over
ditches.

§ 23. That any land holder through whose land any State, county or township road is now or may hereafter be laid out and established, is hereby authorized, under the direction of the

supervisor of the proper district, to construct a passway or passways, either over or under such road or roads, so as to permit the stock of such land holder to pass and repass; provided that such passway or passways, shall not be constructed over or under any road within the limits of the out-lots of any city, town, or village, or within one half mile thereof, and shall not materially hinder or obstruct the travel on such road or roads, where the same may be constructed; provided further, that the said passway or passways shall be constructed and at all times be kept in good repair at the proper expense of such land holders.

§ 24. That each supervisor within his district, shall erect and keep up, at the expense of the township, at the forks of every State and county road, a post and guide-board or finger-board, containing an inscription in legible letters, directing the way and distance to the town or towns or public place or places, situated on each road respectively.

Post and
guide boards.

§ 25. That if any person shall wilfully demolish, throw down, alter or deface any mile-board or guide-board, on, or at the fork of any public road, every person so offending, shall, upon conviction thereof before any justice of the peace of the proper county, be fined in any sum not exceeding ten dollars with costs of suits, and the money, when collected, shall be by the justice of the peace, or constable, collecting the same, paid over to the supervisor in whose district the offence was committed, and be by him appropriated to the repair of the roads and highways within his district, agreeably to the provisions of this act.

Persons injur-
ing such
boards to be
fined.

§ 26. That the commissioners of each county in this State may, at their annual meetings for the purpose of determining the per centum necessary to be levied for the expenses of their respective counties, levy upon all articles subject to taxation for State and county purposes, a tax for the improvement of roads and highways, to be appropriated agreeably to the provisions of this act.

Road tax.

§ 27. That the county commissioners of any county shall not levy, in any one year, a greater amount of road tax than is herein specified, viz: When the aggregate amount of taxable property entered upon the list shall be fifty millions of dollars, the tax shall not be less than one twenty-fifth of one mill, nor more than one mill; and when the aggregate amount of taxable property entered upon the list shall be three millions of dollars, the tax shall not be less than one-tenth of one mill, nor more than one mill on the dollar; and when it is less than three millions of dollars, the road tax shall not be less than two-tenths of a mill, nor more than one and a half mills on the dollar; provided, that nothing in this section shall be so construed as to prohibit said county commissioners from levying any additional tax for road purposes, not exceeding one-half mill on the dollar, that the trustees of any township may deem necessary; pro-

Manner of
levying and
collecting
road taxes.

vided, further, that the trustees of such township shall determine and certify in writing the additional per centum to be levied, and deliver, or cause to be delivered, the certificate aforesaid, to the auditor of the proper county, on or before the first Monday in June, in each year; provided, that the county commissioners of each county in this State may, if they shall deem it necessary, levy an additional tax, annually, upon the taxable property of their respective counties, not exceeding one-half of one mill on the dollar, which shall be collected in the same manner, and at the same time that State and county taxes are collected and paid into the county treasuries of each county; which tax shall be applied under the directions of the county commissioners, exclusively, to the erection and repairing of bridges within the county in which the same shall have been levied and collected; provided, that nothing in this or the preceding sections shall make it compulsory on the county commissioners to levy any tax for road purposes.

The same.

§ 28. That the auditor of each county in this State shall, immediately after the county commissioners, at their annual session for that purpose, shall have determined on the amount to be assessed for road purposes in their several townships, give notice in some newspaper of general circulation in the county, of the per centum on each hundred dollars of the valuation so determined to be assessed in each township, respectively, and that said tax may be discharged by labor on the roads, under the direction of the supervisors of the several districts, at the rate of one dollar per day; and shall make out a list for each township of the amount of road tax with which each individual stands charged; inserting nothing in such list but the name of the person and the amount of such tax, and transmit the same to the clerk of the proper township.

Same object.

§ 29. That it shall be the duty of the township clerk, immediately after the reception of such duplicate, upon the presentation by the supervisors of their respective districts in said township, of a list of all persons liable to perform labor upon the roads and highways, or subject to taxation for the same, to make out and deliver to each supervisor aforesaid, an abstract duplicate of the amount of road tax each person in said district may stand charged with; and the supervisor shall then proceed agreeably to the provisions hereinafter contained.

Treasurers to notify the trustees of money received.

§ 30. That whenever the treasurer of any township shall have received any money from the county treasury for road purposes in such township, he shall notify the trustees of such township of the same, who shall cause the money so received to be appropriated to building bridges, or repairing the public roads, within their township; if for the building of a bridge or bridges, they shall give at least twenty days notice, by advertisement posted up in five of the most public places in said township, of the time and place of such sale, and sell to the lowest bidder (if in their opinion such bidder be competent to perform

the same), such bridge or bridges as aforesaid, as they may deem expedient, equal to the amount of money to be appropriated as aforesaid, and whenever such labor shall be performed agreeably to contract, or conditions of sale, the trustees, or a majority of them, shall draw an order on the treasurer of the township, in favor of the person or persons who have performed such labor, for the amount due for the same, which order shall be paid by the township treasurer on demand.

§ 31. That if the trustees of any township shall deem it expedient to appropriate the money aforesaid, or any part thereof, to the improving of the public roads and highways, they may cause the amount thus set apart for the purpose of improving any road or roads in the several districts in said township, to be expended under the superintendence of the supervisors of said districts, or by such other persons as they may see proper to appoint, and it shall be the duty of the supervisor, or such other person thus appointed, on receiving an order on the township treasurer, to draw from the treasury the amount so appropriated, and proceed to expend the same in improving of the roads and highways in the proper districts, first, by procuring, by purchase or otherwise, such number of plows, scrapers and other tools as the township trustees shall direct or deem necessary for that purpose; secondly, by the purchase of such materials as may be necessary, and to the employment of such number of teams and able-bodied men to perform such labor, at the customary price, as may appear, to said supervisor or superintendent to be just and right.

The money
used to im-
prove public
roads.

§ 32. That the supervisors or other persons appointed agreeably to the foregoing section, shall meet with the trustees, at their annual meeting for the settlement of township business, as hereinafter provided, and then and there produce a list or account of money by him received for road purposes, and how expended, and to whom paid; and the trustees are authorized and required to adjust and settle all accounts so produced to them; and if, upon a fair and accurate settlement, they shall be satisfied that the money has been faithfully applied, and accounted for, they shall allow said supervisor or superintendent one dollar per day for each and every day they may have been necessarily employed in the duties assigned them, and the trustees shall give him an order on the township treasurer for the amount due.

Settlement of
trustees and
supervisor.

§ 33. That any person charged with a road tax on the grand levy, as provided for in the twenty-sixth and twenty-seventh sections of this act may, either personally or by an agent, discharge the same by labor, to be performed on the road, within the proper district within that township where such tax may be charged, by any able-bodied man, at the rate of one dollar per day for each day's work, and a rateable proportion per day for any team furnished by such person; which labor shall be performed under the direction of the supervisor

Supervisors
fees.

Road tax may
be paid in la-
bor.

Proceedings
where tax is
unpaid.

Non-resi-
dents.

Notice of su-
pervisor.

When second
notice given.

When inhabi-
tants may be
called to re-
pair road, &c.

Penalty for
failing to at-
tend.

of highways in the proper district, in such township; and it shall be the duty of such supervisor to return such duplicate on or before the tenth day of November, then next ensuing, to the township clerk, certifying the amount (if any) of taxes that remains unpaid by labor as provided for by this act, and it shall be the duty of the township clerk, within five days thereafter, to certify the same to the township treasurer, who shall immediately proceed to collect the same, and in making such collections, he shall proceed in all respects as is required by law of county treasurers in collecting taxes; provided that the township treasurers shall not be allowed to charge mileage for a greater distance than from his office to the residence of the tax-payer; provided further, that if there be any non-resident tax-payers on the duplicate transmitted to the township clerk by the county auditor, it shall be his duty to certify such non-resident's tax, together with any delinquent tax which the township treasurer may have been unable to collect, to the county auditor, on or before the fifteenth day of March then next ensuing, to be placed on the duplicate and collected as other delinquent and non-resident taxes are collected, and the taxes so collected shall be paid over to the proper township treasurers, which, together with the road taxes by them collected shall be expended on the public roads within the districts from which the same has been collected.

§ 34. That the supervisors of the highways of the several districts, shall give three days' notice to persons residing in the district, charged with a road tax mentioned in the preceding section, and the time and place they will attend, and direct the work to be performed as aforesaid; and in case the whole of said tax due from residents within any district, shall not be paid in pursuance of the first notice aforesaid, in consequence of absence from home, sickness, or other inability, the supervisor shall appoint a time that he will again attend, and shall give notice as aforesaid to such delinquents.

§ 35. That any time, during the year, when any public highway shall be obstructed by the fall of timbers, or any other cause, or any bridge shall be impaired, so the passage of teams or travelers on said road or bridge shall be dangerous, and the supervisor in the district in which such obstruction or impaired bridge may exist, shall be notified of the same, it shall be his duty to cause such obstruction to be removed, or bridge repaired, forthwith, for which purpose he shall immediately order out such number of inhabitants of his district, as he may deem necessary to remove said obstructions, or repair said bridge.

§ 36. That each and every person so ordered out, who shall, after having one days' notice, refuse or neglect to attend with proper implements, wherewith to labor, at the time and place appointed by the supervisor, or having attended, shall refuse to obey the directions of the supervisor, or shall spend

the time in idleness or inattention to the duties assigned him, every such delinquent shall forfeit and pay the sum of one dollar for every such offence, to be recovered, paid over, accounted for, and appropriated agreeably to the provisions of this act.

§ 37. That in all cases where any person shall, under the direction of the supervisor, perform more labor on the public road than may be due from him, the supervisor shall give such person a certificate, specifying the amount of extra labor so performed, which certificate shall be received for the amount specified in such certificate, in discharge of any labor within the same district, which may be due from the holder of such certificate, in any succeeding year, under the provisions of this act. *Provided*, that the two preceding sections shall not be so construed as to authorize any supervisor to order out or direct any person to perform more than one day's work, in any one year, over and above the amount of labor due from such person, agreeably to the provisions of this act.

If overplus paid, amount to be credited on succeeding years' tax.

§ 38. That the trustees of townships shall meet at the place of holding annual elections, on the first Monday of March, at which time and place the several supervisors of the township shall attend, and each produce his list and account of all labor performed within their respective districts, agreeably to the provisions of this act, together with a statement of the amount of all fines, penalties and forfeitures by him collected, or judgments for the same obtained; also, the amount by him expended, in accordance with the same; and the trustees are hereby authorized and required to adjust and settle all accounts so produced to them, and to allow such amount for delinquencies, as they shall deem just and reasonable; and if, upon a fair and accurate settlement, there shall appear to be a balance due to any supervisor for his services under this act, the trustees shall give him an order on the township treasurer, for the amount due, at the rate of one dollar per day, for the time he may have been necessarily employed; *Provided*, that the supervisor shall, in all cases, be held accountable for the full amount and the faithful application of labor due in his district, unless, for good cause shown, the trustees shall deem it just to remit the same.

When and how settlement made.

§ 39. That if, upon settlement with the township trustees, at their annual meeting for that purpose, there shall be any unexpended money in the hands of any supervisor, which has been collected under the provisions of this act, he shall pay the same over to his successor in office, taking his receipt for the amount thereof, which receipt he shall lodge with the township treasurer.

Disposition of balance in supervisors hands.

§ 40. That each and every supervisor who shall neglect or refuse to perform the several duties enjoined on him by this act, or who shall, under any pretence whatever, give or sign any receipt or certificate, purporting to be a receipt or certificate for labor or work performed, or money paid, unless the labor shall have been performed, or tax paid, prior to the giving

Penalties against supervisors.

Who shall
prosecute.

Appeal.

Act to be given
in charge
to grand jury.

Repealing
clause.

or signing such receipt or certificate; every supervisor so offending, shall forfeit, for every such offence, not less than five dollars, nor more than fifty dollars, to be recovered by indictment in the court of common pleas, or by an action before any justice of the peace within the township where such supervisor may reside; and it is hereby made the duty of the trustees of the townships to prosecute all offences against the provisions of this section: *Provided*, that if any supervisor conceive himself aggrieved by the judgment of such justice of the peace, he may, on giving sufficient security to said justice for the payment of costs, appeal to the court of common pleas, who shall make such order thereon, as to them may appear just and reasonable: *Provided*, further, that this section shall not be so construed as to prevent any person from prosecuting any supervisor for any offence against the provisions thereof.

§ 41. That it shall be the duty of the several courts of common pleas, to give this act in charge to the grand jury, at each successive term of such court.

§ 42. That the act entitled "An act prescribing the duties of supervisors, and relating to roads and highways," passed March twentieth, one thousand eight hundred and thirty-seven, and the amendatory acts thereto, passed March twentieth, one thousand eight hundred and forty, March fifth, one thousand eight hundred and forty-two, January fifteenth, one thousand eight hundred and forty-five, March twentieth, one thousand eight hundred and fifty-one, March twenty-fourth, one thousand eight hundred and fifty-one, an act to regulate the levying of a tax for road purposes in the counties of Belmont and Jefferson, passed February fifteenth, one thousand eight hundred and forty-nine, be and they are hereby repealed; provided that the liability or obligation incurred under any of the provisions of said acts, shall not be in any wise affected or impaired by the repeal thereof.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 13, 1853.

AN ACT

To provide for the purchase of copies of Curwen's Revised Statutes of Ohio.

Secretary of
State to purchase
copies
of Curwen's
Statutes.

§ 1. *Be it enacted, by the General Assembly of the State of Ohio*, That the Secretary of State be and he is hereby authorized and directed to purchase for the use of the State, one thousand copies of the first volume of Curwen's Revised Sta-

tutes of Ohio, at a price not exceeding three dollars and fifty cents for each copy.

§ 2. That said Secretary is further authorized and directed to subscribe on behalf of the State, for one thousand copies of the second and third volumes of said Statutes, at a price for each copy not exceeding the sum named in the first section of this act; Provided, that before said second and third volumes shall be received and accepted, the same shall be found by the Governor and Supreme Judges of the State, equal in intellectual and mechanical execution to the first volume of said work, and on whose certificate, finding that fact, said Secretary shall receive said volumes and give a receipt to M. E. Curwen therefor.

His further duties concerning said purchase.

§ 3. That said volumes shall be placed in the State Library, and there securely kept, subject to such distribution as may hereafter be directed by the General Assembly.

Volumes placed in State Library.

§ 4. The expenses arising under this act shall be provided for in the general appropriation law.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 19, 1853.

AN ACT

Authorizing Sheriffs, Master Commissioners and Coroners, to make returns of sales to any day during the Spring Term of Court for 1853.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the sheriff, coroner, or master commissioner, as the case may be, of any of the counties of this State, to whom process has, or may be issued, upon which such officers or either of them, have advertised or may advertise, any sale or sales of real estate in pursuance of law, and in which the day named for such sale or sales shall be a day after the first day of the spring term, for the year one thousand eight hundred and fifty-three, of the court of common pleas of the county to which such process is returnable, may nevertheless proceed with such sale or sales, and make return thereof to the proper court during its session, and such return and

Sheriffs, Coroners or Master Commissioners to make return of sales, during spring term of court, 1853.

proceedings shall be as valid as if the same had been made on or before the second day of the term of the court to which the same was returnable.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 19, 1853.

AN ACT

To fix and provide for the terms of the District Court in the several counties of the First Circuit, being composed of the Second and Third Common Pleas Districts of Ohio.

**Terms of the
District Court
in the First
Circuit.**

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the District Court shall be held in the several counties of the Second and Third Common Pleas Districts of Ohio, as follows :

SECOND COMMON PLEAS DISTRICT.

**Second Com-
mon Pleas
District.**

In the county of Butler, on the ninth day of May.
In the county of Preble, on the nineteenth day of May.
In the county of Darke, on the twenty-fifth day of May.
In the county of Miami, on the thirtieth day of May.
In the county of Montgomery, on the sixth day of May.
In the county of Champaign, on the twentieth day of June.
In the county of Clark, on the twenty-third day of June.
In the county of Greene, on the twenty-seventh day of June.
In the county of Clinton, on the sixth day of July.
In the county of Warren, on the eleventh day of July.

THIRD COMMON PLEAS DISTRICT.

Third.

§ 2. In the county of Shelby, on the first day of August.
In the county of Mercer, on the fourth day of August.
In the county of Auglaize, on the eighth day of August.
In the county of Allen, on the tenth day of August.
In the county of Hardin, on the twelfth day of August.
In the county of Logan, on the fifteenth day of August.

In the county of Union, on the eighteenth day of August.

In the county of Marion, on the twenty-second day of August.

In the county of Crawford, on the twenty-fifth day of August.

In the county of Wyandot, on the twenty-ninth day of August.

In the county of Seneca, on the thirty-first day of August.

In the county of Hancock, on the fifth day of September.

In the county of Putnam, on the seventh day of September.

In the county of Van Wert, on the ninth day of September.

In the county of Paulding, on the twelfth day of September.

In the county of Defiance, on the fourteenth day of September.

In the county of Williams, on the sixteenth day of September.

In the county of Fulton, on the nineteenth day of September.

In the county of Henry, on the twenty-first day of September.

In the county of Wood, on the twenty-third day of September.

§ 3. If from any cause, a failure to hold the prescribed term of the district court, should occur in any of the aforesaid counties, it shall be the duty of the judges of the district court, on giving thirty days previous notice in such county, to hold therein a special term of the district court, within the same year, to dispose of the business pending; and should important business arise in the district court of any of said counties, which cannot be disposed of for want of time, it shall be lawful for the judges of the district court, if practicable, to hold a special term of said court in such county, at such time as they shall determine, on giving thirty days notice, in such county, and should the beginning of any term therein prescribed fall on Sunday, the said court shall be held on the next succeeding day. Special terms.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 19, 1853.

AN ACT

Supplementary to an act entitled "An act to provide for the State Printing,"
passed April 16, 1852.

State Printing
in German.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Secretary, Auditor and Treasurer of State shall, immediately after the passage of this act, give notice in two English and one German newspapers printed in the city of Columbus for the period of ten days; and thereafter in the same manner and at the same time as is provided in the first section of the act to which this is supplementary, that sealed proposals will be received at the office of the Secretary of State, until the eleventh day after the first publication of said notice, for the printing in the German language of all documents ordered to be printed in said language by the General Assembly, or either branch thereof; which proposals shall distinctly state the price per thousand ems for composition, the price per token for press work, and the price per thousand words for the translation, at which the bidder is willing to perform said work; and the Secretary, Auditor and Treasurer, or any two of them, after the expiration of said notice, shall proceed to open said bids and to award said contract to the lowest bidder therefor, who will give bond as provided for in the tenth section of said act.

§ 2. Said contract shall extend to the first Monday in November, one thousand eight hundred and fifty-four, and said contractor and executive officers shall be governed in all cases by the provisions of the act entitled "An act to provide for the State Printing," passed April 16, 1852.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 24, 1853.

AN ACT

Authorizing the trustees of townships to establish water-courses, and locate ditches in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of townships shall have the power upon application of the parties, to enter upon any lands in their township, to view any water course, or proposed ditch, for the purpose of draining the lands of one or more persons, and, in case the parties interested shall be unable to agree where said water course shall be opened, or said proposed ditch shall be cut, said trustees shall cause said water-course or ditch to be located, and surveyed, and shall set apart to each person interested in the said water-course or ditch, such portion of the same, to be by him opened, as shall, by said trustees, be deemed just and right, according to the benefit to be derived from the opening of said water-course or ditch.

Trustees to locate ditches, &c.

§ 2. That when any person shall make application to the trustees, as is prescribed for in the foregoing section, he shall give notice in writing, to all other persons interested in the proposed ditch, or water-course, which notice shall be served, by copy left with or at the residence of such person so interested, at least three days before the day on which said trustees are to meet for the purpose of making the examinations provided for in the first section of this act; and a copy of said notice, with an affidavit that the same has been served, as aforesaid, shall be taken by said trustees, as evidence of the service of said notice; and if any of the persons so mentioned reside out of the State or county, it shall be lawful to give them notice by publishing the same in a newspaper of general circulation in the county, as required in chancery cases.

Person applying to give notice in writing to others interested.

§ 3. If any of the persons interested in the proposed water-course or ditch, shall fail to procure the cutting of said ditch, or the opening of said water course in that section of the same assigned by the said trustees to such person, at the time, and in the manner designated by the order of said trustees, any other person who may be interested in the opening of said ditch, or water-course, shall be authorized to enter upon any land through which the said ditch or water-course may have been located, as aforesaid, to open said water-course or cut the said ditch; and in such cases it shall be the duty of the said trustees to value the labor so performed, when they shall be called upon for that purpose, and they shall give to the person having performed the labor as aforesaid, a certificate of the

Concerning ditches and water courses when opened by individuals.

Compensation—how made

amount and value of the labor so by him performed, or caused to be performed, and the person holding such certificate, shall be authorized after demand and refusal, to recover by action of debt, before any court of competent jurisdiction, the amount of said certificate, from the person to whom the opening of said ditch or water-course was assigned by the said trustees, together with costs of suit and the cost claimed by the trustees for their duties enjoined upon them by this act; and when execution shall have been issued upon any judgment recorded as aforesaid, and the same shall be returned unsatisfied in whole or in part, it shall be the duty of the court before whom such judgment was rendered, to cause the same to be certified with the costs and all proceedings in the case, to the auditor of the proper county, who shall enter the same upon the tax duplicate of said county, against the tract or lot of land, through which said ditch or water-course had been opened, and the amount so entered shall be collected by the treasurer, the same as other taxes; and when collected, shall be paid over to the person or persons interested in the said judgment: *Provided*, that if any of the persons interested in the proposed water-course or ditch, reside out of the State or county, shall fail to pay to the person holding such certificate for thirty days after the labor has been performed, the person holding the same may file it with the auditor of the county, who shall levy the same on the tax duplicate, and the same shall be proceeded with without suit in all respects as required in this section.

Duties of auditors in such cases.

§ 4. No county auditor shall be under obligation to enter the amount mentioned in the preceding section, unless the same shall be accompanied with a full and particular description of the lot or part of lot subject to the amount claimed as aforesaid.

Ditches when in two or more townships.

§ 5. In all cases, where any proposed ditch or water-course shall be in more than one township, application shall be made to the trustees of each of said townships, and in such case, a majority of the trustees of such townships shall be competent to locate and establish the ditch or water-course as aforesaid.

Persons aggrieved may appeal to probate court.

§ 6. In all cases, when any person shall feel himself aggrieved by the location of any proposed ditch or water-course, by the township trustees, he may, within three days next ensuing, give notice in writing, to all other persons interested in the same, of his intention to appeal from the decision of the trustees as aforesaid, to the judge of probate of his proper county, and shall, within the next ten days thereafter, make application to the said judge of probate, setting forth his grievances, and praying him to appoint a committee of review for the same.

§ 7. That before any such application shall be heard by the said judge of probate, the person making the same shall enter into bonds with two or more sufficient sureties in the penal sum of one hundred dollars, conditioned for the payment of all costs that may accrue in consequence of such application for committee of review being heard.

Appellants to give bond for costs.

§ 8. That when such application shall be made in accordance with the provisions of the two preceding sections, the probate judge shall appoint a committee of five disinterested freeholders of said county, not residents of the township in which such proposed ditch or water-course shall be located, who shall, within five days after appointment, examine and review said proposed ditch or water course, and the land adjacent thereto, and forthwith make a report of their proceedings to the said probate judge.

Reviewers appointed by probate judge.

§ 9. If it shall appear, from the report of the committee of review, that the said proposed ditch or water-course was properly located by the said township trustees, the said ditch or water-course shall be cut or opened, in said location; and if, from the report of said committee, it shall appear that the said proposed ditch or water-course was improperly located, or located to the injury of the appellant, the same shall be changed and located, as shall, to the said committee be deemed just and right.

Reviewers to report their decision.

§ 10. If the appellant shall fail to get the location of said proposed ditch or water-course changed, he shall be adjudged to pay the costs of committee of review, and costs of the probate judge; if the appellant succeed in effecting the change, as aforesaid, the probate judge shall make such disposition of the costs, as to him shall be deemed just.

Action had according to the report.

§ 11. The trustees and committee of review shall receive, as a compensation for their services, under this act, one dollar per day, each, for the time in which they are employed, and the probate judge shall receive the same fees as for like services in other cases.

Compensation

§ 12. That the act entitled "an act providing for the appointment of commissioners of sewers in certain counties in this State," passed March 26th, 1841, and the amendatory act thereto, passed April 30th, 1852, be and the same are hereby repealed.

Acts repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

February 24, 1853.

AN ACT

Supplementary to the act entitled "An act to provide for the settlement of the estates of deceased persons."

Concerning
embezzlement
of property of
deceased per-
sons.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That upon complaint made to the probate court of any county, by the executor or executors, administrator or administrators, creditor or creditors, devisee or devisees, legatee or legatees, heir or heirs, or other person or persons interested in the estate of any deceased persons, against any person or persons suspected of having concealed, embezzled or conveyed away any of the moneys, goods, chattels, things in action or effects of such deceased, the said court shall cite the person or persons suspected, forthwith to appear before it, and to be examined on oath or affirmation, touching the matter of the said complaint.

Persons refus-
ing to be ex-
amined, com-
mitted to jail.

§ 2. That if any person so as aforesaid cited, shall refuse or neglect to appear and submit to an examination as aforesaid, or shall refuse to answer such interrogatories as may be lawfully propounded, the probate court shall commit such person to the jail of the county, there to remain in close custody, until he or she shall submit to the order and direction of the court in that behalf.

Examinations
reduced to
writing.

§ 3. That all such examinations, including as well questions as answers, shall be reduced to writing, signed by the party examined, and filed in the court before which the same was taken.

Witnesses al-
lowed to par-
ties.

§ 4. That the probate court shall, if required by either party, swear or affirm such other witness or witnesses as may be offered by either party, touching the matter of such complaint, and shall cause the examination of every such witness, including as well questions as answers, to be reduced to writing, signed by the witness and filed as aforesaid.

Proceedings
of the Probate
Court.

§ 5. That if upon any such examination, the probate court shall be of opinion that the person or persons accused is or are guilty, of either having concealed, embezzled or conveyed away any moneys, goods, chattels, things in action or effects of the deceased person aforesaid, the court shall forthwith render judgment in favor of the executor or executors, administrator or administrators, of the estate, or in favor of the State of Ohio, for the use of the estate of such deceased person (if there be no executor or administrator in this State) against the person or persons so found guilty, for the amount of the moneys or the value of the goods, chattels, things in action, or effects so concealed, embezzled or conveyed away, together with ten per centum penalty, and all the costs of such pro-

ceeding or complaint, which said judgment shall be a lien upon the real estate of the person or persons against whom it is rendered, within the county from the rendition thereof.

- § 6. That the executor or executors, or administrator or administrators in favor of whom any such judgment shall have been rendered, may forthwith deliver to the clerk of the court of common pleas of the said county, an authenticated transcript (which the probate judge is hereby directed to make out and deliver, on demand, to such executor or executors, or administrator or administrators,) on which said transcript the clerk aforesaid shall immediately issue an execution of fieri facias et levare facias, returnable to the next term of the said court of common pleas for the amount of the original judgment and costs, and the costs which may have accrued, or may accrue thereon. And thenceforth proceedings on the said executions shall be in all respects as if the said judgment had been rendered in the said court of common pleas.

Judgment,
how collected.

- § 7. That if such judgment as aforesaid be rendered in the name of the State of Ohio, and there be no executor or administrator within this State, the prosecuting attorney of the county shall cause the said transcript to be filed in the clerk's office, and proceed thereon to execution as before provided; and he shall pay the moneys realized upon such execution, to the treasurer of the county, for the use of the said estate, reserving such compensation to himself only as the probate court may allow.

Prosecuting
Attorney to
act in certain
cases.

- § 8. That all gifts, grants or conveyances of lands, tenements, hereditaments, rents, goods or chattels, and all bonds, judgments or executions, made or obtained with intent to avoid the purposes of this act, or in contemplation of any such examination or complaint as aforesaid, shall be utterly void and of no effect.

Gifts, grants,
&c., void.

- § 9. That the two hundred and thirty-ninth section of the act to provide for the settlement of the estates of deceased persons, passed the twenty-third day of March, in the year eighteen hundred and forty, be repealed: *Provided, however,* that such repeal shall not affect any proceeding commenced or right accrued under or in virtue of the said section.

Section re-
pealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 26, 1853.

AN ACT

Regulating the fees of Sheriffs and Probate Courts.

Sheriff's fees
in Probate
Courts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Sheriffs of the several counties in this State, for performing the duties required by law in the court of probate, shall receive the same fees as are now or hereafter may be allowed by law for similar service in the courts of common pleas, to be taxed against the proper parties by the probate judge.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 2, 1853.

AN ACT

Making appropriations in part for the year 1853, and for deficiencies in the Quarter Master General's Department in the year 1852.

Sums appro-
priated.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the following sums be, and they are hereby appropriated, out of any money in the treasury not otherwise appropriated, viz .

For the compensation and expenses of the Quartermaster General, three hundred dollars.

For paying expenses, and taking care of public arms, one thousand dollars.

For one quarter's rent due William Neil on the first day of January, 1853, for the use of the Hall of the House of Representatives, two hundred and fifty dollars.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 2, 1853.

AN ACT

To provide for draining and reclaiming the swamp and overflowed lands granted to the State of Ohio, by act of Congress, approved September 28th, 1850.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That within thirty days after the passage of this act, the Auditor of State shall cause to be transmitted to the county auditor of each county in which any of said swamp or overflowed lands may be situated, a list of the same by such description, and in such divisions and subdivisions as reported by the Secretary of the Interior to the Governor of the State of Ohio.

Auditor of State to send a list to county auditors.

§ 2. That it shall be the duty of the said several county auditors, immediately after the reception of such list, to notify the county commissioners of his county thereof; whose duty it shall be, as soon thereafter as practicable, to appraise said lands, and make return thereof, in writing, to the said auditor, and they shall also, at the same time, taking to their assistance if necessary, a competent engineer, determine the mode in which said lands shall be drained.

Auditor and Commissioners' duties.

§ 3. That the said several county auditors, upon the return of the county commissioners as aforesaid, shall give notice in some newspaper in said county, if any there be; if not, then in some newspaper having general circulation therein, at least thirty days, that sealed proposals will be received until the expiration of said time for draining and reclaiming said swamp or overflowed lands, in the manner specified by, and under the direction of said county commissioners, to be paid in said lands lying in said county at the appraised value thereof.

Notice, that sealed proposals will be received for draining, &c.

§ 4. That at the expiration of the said thirty days, the said several county auditors and county commissioners, shall open and examine the proposals received, and award the contract of drainage and reclamation to the lowest responsible bidder or bidders; and it shall be the duty of such successful bidder or bidders to give bond with security, to the satisfaction of said commissioners, and payable to them for the use of the county, for the faithful performance of his or their contract, in such seasonable time as the said commissioners shall designate, and which shall in no case exceed two years from the date of such contract.

Bids received and contract awarded.

§ 5. That if no proposals are received, for said drainage or reclamation, at the expiration of the said thirty days, or if the said commissioners shall deem those received unreasonably high, or if any contractor or contractors for such drainage or

When to advertise again.

reclamation, shall fail to perform his or their contract, in either event it shall be the duty of the said several county auditors and county commissioners to proceed to advertise, and let the work as hereinbefore prescribed.

Contractor
to receive a
certificate.

§ 6. That upon the completion of said contract or contracts, the county auditor of the proper county shall give the said contractor or contractors a certificate for the amount due him or them, thereon, and containing an accurate description of the land to which he or they are entitled therefor.

Governor to
deliver patent.

§ 7. That upon the presentation and delivery of such receipt to the Governor of the State, it shall be his duty to execute and deliver to such contractor or contractors, a patent executed in due form of law for the lands therein described.

Lands re-
maining, dis-
posed of by
sale.

§ 8. That it shall be the duty of the auditor of state, upon the issuing of any such patent or patents, to record the same in such manner as is or may be prescribed by law, for recording the patents of other lands sold by the State of Ohio.

§ 9. That if after the said swamp or overflowed lands, of this State, lying within any county, be drained and reclaimed as herein provided, there shall remain any of the said lands undisposed of it shall be the duty of the county commissioners of such county to appraise the same and make return of such appraisal as aforesaid. Upon the filing of such return in his office, the said county auditor is hereby authorized to sell the said lands at the appraised value thereof to any applicant therefor who will make an oath or affirmation that it is his intention to improve and make the same a permanent residence, or that the same adjoin to and are necessary to the proper improvement of lands then owned and improved by such applicant, which said oath or affirmation the said county auditor is hereby authorized to administer; and in all cases of sales as prescribed in this section, the said county auditor shall receipt to the purchaser for the amount of money received, and describe therein the lands sold, which said receipt upon presentation and delivery to the Governor shall entitle the purchaser to a patent for such lands, to be executed and recorded as prescribed by sections seven and eight of this act.

Money for
such sales
paid to the
county.

§ 10. That all moneys received by said county auditor upon all sales as aforesaid, shall be paid into the county treasury of the county, in which the lands sold are situated, to reimburse the county for the expenditures of draining and reclaiming said swamp or overflowed lands, and the residue, if any there be, shall be paid by said county treasurers into the State treasury for the use of common schools.

Companies
formed for
draining, &c.

§ 11. That in any county of this State where a company or companies have been formed for the purposes of draining and reclaiming the swamp or overflowed lands lying within such county, and when work has been done or materials furnished, or both, the work so performed and materials provided,

shall be appraised by the county commissioners at its or their true value in money, and the auditor of such county shall execute and deliver to such company or companies a certificate for so much of said swamp or overflowed lands at its appraised value as will pay for said labor and materials, which certificate shall entitle said company or companies to a patent therefor, to be executed and recorded as other patents issued in pursuance of the provisions of this act.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

March 2, 1853.

AN ACT

Fixing the compensation of Crier of the Supreme Court of the State of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the crier of the supreme court of the State of Ohio shall receive for his services during the time actually employed in attending on said court, two dollars per day, to be paid out of the State Treasury on the order of the Auditor of State.

Compensation
of crier, two
dollars per
day.

How paid.

§ 2. That no order shall be given as aforesaid, until the crier produce a certificate from one of the judges of said court, certifying the number of days the said crier has been so employed.

His time certi-
fied by one of
the judges.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

February 19, 1853.

AN ACT

To amend the act entitled "an act to provide for the organization of cities and incorporated villages."

Rules and restrictions as to taxes.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the amount of tax which may be certified, assessed and collected annually for a special road district by the council of any city or the trustees of any incorporated village, to defray the general and incidental expenses thereof, shall not exceed two and a half mills on the dollar of the amount subject to taxation; for an incorporated village to defray its general and incidental expenses, three mills on the dollar; and for the purpose of paying existing indebtedness, seven mills on the dollar; for a city of the second class to defray its general and incidental expenses, three mills on the dollar; for a city of the first class to defray its general and incidental expenses, five mills on the dollar; to the amount authorized for general and incidental purposes specially designated, and to be applied or appropriated to none other, as follows: by cities of the second class for the purposes of pay and support of the city police, an amount not exceeding one mill on the dollar; for the purpose of contributing to the maintenance of a fire department, an amount not exceeding a mill on the dollar; for school purposes, an amount not exceeding four mills on the dollar; by cities of the first class, for the purpose of the pay and support of the city police, an amount not exceeding two mills; for the purpose of contributing to the maintenance of a fire department, an amount not exceeding one mill on the dollar; for the purpose of a house of refuge, house of correction, work house, and city prison, an amount not exceeding one and a half mills; for the purpose of water-works, an amount not exceeding one half of a mill on the dollar; for school purposes, an amount not exceeding two mills; for the purpose of a city infirmary and out-door relief to the poor, an amount not exceeding two mills on the dollar.

Any city may borrow money to erect water works, and issue its bonds in any amount not exceeding \$500,000.

§ 2. That any city, for the purpose of erecting water-works, for supplying such city with water, may issue its bonds for borrowing money in any sum not exceeding five hundred thousand dollars, at such rates of interest, at such dates, and upon such length of time as the city council of any such city may deem proper; and all moneys so borrowed shall be used and applied exclusively to the erection of such water-works, and to no other use or purpose whatever; Provided, that no money shall be borrowed by any city for the purpose afore-

said, unless the proposition setting forth the amount proposed to be borrowed, shall have been distinctly submitted to a vote of the electors of such city, under the provisions of a city ordinance, and shall have been approved by a majority of those voting upon the proposition: Provided, however, that the provisions of this section shall not be construed to apply to any city in which water-works are already constructed.

§ 3. For the purpose of paying the interest on the money so borrowed, during the erection and completion of such water works, and before they shall have been put in operation, a tax of sufficient amount shall be assessed and collected each and every year, in the usual manner of levying and collecting taxes in said city, upon all the taxable property thereof.

Tax to pay interest.

§ 4. For the purpose of paying the interest on the amount borrowed by any city for the purchase, erection, or extension of water works, and after they shall have been put in operation, and for the building of machinery, a tax of sufficient amount may be assessed and collected by the city council, in each and every year, in such manner as the city council may deem most equitable and proper, as may be directed by ordinance, upon all the taxable property adjoining, abutting to, or bounded upon any street, lane, alley, public ground, square, block, or premises, through which water pipe has been laid; and the city council of any city in which water works are now situated, shall on or before the first day of March, eighteen hundred and fifty-four, determine by ordinance whether the aforesaid tax shall be so levied and collected, or whether water rents shall be assessed and collected as heretofore by the trustees of water works, or city council, of all cities where water works are now in use.

Same subject.

§ 5. For the purpose of paying the expenses of conducting and managing water works, the trustees of water works shall have power to assess and collect, from time to time, a water rent of sufficient amount, in such manner as they may deem most equitable, upon each and every tenement adjoining, abutting to, or bounded upon any street, lane, alley, public ground, square, block, or premises through which water pipe has been laid; for the creation of a sinking fund for the redemption of the indebtedness of any city, contracted by loans for water works purposes, the amount as hereinbefore provided for in the third section of this act, and levied and assessed for water works purposes, shall be applied by the city council to the payment of such indebtedness, and none other.

Tax to pay expenses of conducting and managing water works.

Sinking fund.

§ 6. The city council of any city in which water works are, or may be situated, or in progress of construction, shall establish a board of three trustees, to be known as the trustees of water-works, who shall be elected by the qualified electors of the city, and hold their offices for the term of three years; except at the first election under this act, at which one person

Board of trustees, how established and terms of office.

**Their powers
and duties.**

**To report
monthly to the
city council.**

**To make an
annual report.**

shall be chosen for one year, one person for two years, and one for three years, and thereafter one of the trustees shall be elected annually; the trustees of water-works shall manage, conduct and control the city water-works, furnish supplies of water, collect water rents, and appoint all necessary officers and agents, and the amount of the salaries of said officers or agents so appointed, and the term of office, shall be determined by the trustees; the trustees of water-works shall be authorized to make such by-laws and regulations as they may deem necessary for the safe, economical and efficient management and protection of the works; and said by-laws shall be of the same validity as the city ordinances, provided they are not made repugnant to the ordinances of the city, constitution or laws of the State of Ohio. The trustees of water-works shall cause a report to be made monthly to the city council, of the receipts and disbursements of money belonging to the works, and annually make a report of the condition of the works, and cause the same to be printed for the benefit of the public; and cause all money received or collected for water-works purposes, to be deposited with the city treasurer, and cause receivers or collectors of water-works funds to make such deposits weekly, and return a receipt for the amount deposited to the trustees or their authorized agent; and all money so deposited with the city treasurer, on account of the water-works, shall be kept a separate and distinct fund, for the payment of such indebtedness of the water-works, as is hereinbefore mentioned, and together with the amount of the interest allowed to the city treasurer upon the water-works funds which shall be deposited by him in such place as the city council shall order, shall be subject to the order of the trustees of water-works, of the city in which such water-works are or may be situated; and all orders made by the trustees of water-works on the city treasurer for money, shall be signed by one of the trustees, and countersigned by the secretary or clerk of the water-works; the trustees of water-works shall also be authorized to make contracts for the building of machinery, waterworks buildings, reservoirs, and for all other necessary purposes, to the full and efficient management and construction of such water-works; and for such purpose the city council of any city where water-works are already constructed, are hereby authorized, upon petition of the trustees of water-works, to borrow any sum of money not exceeding seventy-five thousand dollars, at a rate of interest not to exceed six per cent. per annum, said sum to be made use of for water-works purposes and none other.

**City council
authorized to
appoint a com-
mittee of in-
vestigation—**

§ 7. The city council of any city in which water-works are, or may be situated, or in progress of construction, shall be authorized to appoint a committee for the investigation of books and papers, together with all matters pertaining to the

management of the water-works, at least once a year, and oftener if necessary by reason of any neglect of duty, or malfeasance on the part of any officer of the works, and any officers of the works, found by said committee so offending, shall be liable to impeachment and removal from office by the city council; no charge shall be made by the trustees of water works to any city for supplying the city with water for the extinguishing of fires, or cleaning of fire apparatus, or the cleaning of market houses, or for the use of any of the public buildings belonging to the city; but all attachments of whatever nature, made to the water pipes, or other fixtures belonging to the water works, and intended for public use, shall be subject to the same supervision, rules and regulations as are otherwise made, and intended to protect the water works against abuse, destruction, and inordinate or unnecessary use or waste of water, or the trustees may make general or special rules and regulations for such purpose.

when officers
liable to im-
peachment
and removal.

§ 8. The city council of any city shall have power to enter upon and take possession of any lands which may be deemed necessary for the construction, erection or extension of water-works, or the laying down of pipe, and any land so taken possession of for water-works purposes, shall not be liable to be made use of or taken possession of for any other purpose whatever, except by consent of the trustees of water works and the city council; when it becomes necessary to appropriate lands for such purpose as hereinbefore mentioned, the proceedings shall be the same as provided in sections twenty-seven, twenty-eight, and twenty-nine, of the act for the organization of cities and incorporated villages, passed May 3rd, 1852.

Council may
appropriate
lands for wa-
ter works pur-
poses.

§ 9. That the the trustees of water works, before entering into any contract for work to be done, the estimated cost of which shall exceed one hundred dollars, they shall cause at least two weeks notice to be given in one or more daily newspapers of general circulation in said city, that proposals will be received by said trustees, for the performing of such work, which shall be specified in said notice; and the trustees shall contract with the lowest bidder, if in their opinion said lowest can be depended on to do the work with ability, promptness and fidelity, and if such may not be, said trustees may give such contract to the next lowest bidder, or decline to contract and advertise again; said trustees shall require bond to be given with good and sufficient security, for the faithful performance of the work; but no member of said board of trustees shall be such security; nor shall any of said trustees be a contractor, or be in anywise either directly or indirectly, interested in any of such work to be contracted for: Provided, nevertheless, that in case of emergency, the city council of said city may, by a vote of two-thirds of all the

Proposals for
work over
\$100.

No trustee to
be a contrac-
tor.

members elect, authorize said trustees to enter into such contracts without advertising to meet such emergency.

Council to appoint inspectors.

§ 10. The city council of any city may provide by ordinance for the appointment of a suitable number of inspectors for all such purposes as are not otherwise provided for by law, and the said council shall have power to provide for issuing license to any such inspectors and to regulate the fees to be paid to such officer for his services as such inspector.

The council, for extending time of payment of any debt, may issue bonds of the city.

§ 11. That the city council of any city or trustees of any incorporated village, for the purpose of extending the time of the payment of any indebtedness heretofore incurred, and which from its limit of taxation such city or incorporated village is unable to pay at its maturity, shall have the power to issue the bonds of such city or incorporated village, or borrow money, so as to change but not increase the indebtedness, in such amounts, and for such length of time, and at such rate of interest as such city council or trustees of any incorporated village, may deem proper, not to exceed six per cent. per annum; and when such bonds shall have been issued, a tax shall be assessed and collected sufficient in amount to provide a sinking fund for their final redemption as provided in section ninety-one of the act to which this is supplemental.

Certain appropriations not authorized.

§ 12. That the ninety-eighth section of said act be, and the same is hereby so amended as to read as follows: That the council of any municipal corporation shall not authorize any loan or appropriation not predicated on the revenues of the corporation for the current fiscal year, and shall not authorize any order or appropriation of money when there is not in the city treasury money unappropriated sufficient to pay such appropriation; and any appropriation otherwise made or authorized, shall be held and deemed utterly void and of no effect as against said corporation: Provided, however, that for the purpose of purchasing necessary grounds and erecting suitable school buildings for the use of public schools, the council of any such corporation may, at the request of the board of education of said corporation, make sufficient appropriation therefor, and shall have power to borrow money upon the credit of such corporation sufficient for the aforesaid purposes, at such rates of interest as said council may deem proper; and for the purpose of perfecting such loan, the said council shall have power to pledge the faith of said corporation for the payment of both principal and interest, including the power to levy a tax for the payment of the same whenever the same may become due, and to make and execute such bonds or other evidences of debt, and payable at such times and places as shall be agreed upon by the parties so contracting, which said bonds or other evidences of debt may be made transferable and redeemable in such form and at such times and places as may be therein designated; and the neces-

Council may borrow money for school purposes.

Loan, how perfected.

sary grounds shall be procured, and the said school buildings hereby authorized, shall be constructed under the direction of, and in accordance with, a plan or plans furnished by the board of education of said corporation; and provided, further; that the city council of any city of the first class shall have power to borrow any sum of money not exceeding five hundred thousand dollars, at such rate of interest not exceeding six per cent. per annum, at such dates and upon such length of time as the city council of any such city may deem proper, for the purpose of purchasing lands or other property within the corporation limits of such city, said lands or property to be converted to the use of such city for public wharves, public squares, or parks, or market spaces; and any city council of any such city so borrowing any money for such purpose or purposes, shall be authorized to issue the bonds of said city, payable at such time and such place, for all money so borrowed as said city council may determine; said city council shall have power to pledge the faith of the city for the redemption of said bonds, and shall also have power to provide for the payment of the interest on such loan, provided that nothing in this act shall be so construed as to vest in any such city council any power to issue the bonds aforesaid for said loan of five hundred thousand dollars, or any part thereof, for the purchase of public wharves, squares or parks, or market spaces, unless the following requirements have been complied with, to-wit: that whenever it shall become necessary for any such city to purchase any such public wharves, squares, or market spaces, it shall be the duty of the mayor of said city to nominate three citizens, subject to the confirmation of the city council, as a board of commissioners for the purchase of so much land for such of the purposes aforesaid as said city council may designate; and upon the confirmation by the city council of the nomination of said commissioners, it shall be their duty to negotiate for the purchase of such lands for the purposes aforesaid, as said city council may direct; and they shall report to the city council all propositions they may have received, in writing, for the sale of any such land for the purposes aforesaid; after having received said report or reports from said commissioners, said city council may consummate the purchase conditionally as follows, to wit: that said city council shall advertise in at least two English and one German daily newspapers of said city, for the space of thirty days, their intention to consummate said purchase, the extent, location, and purpose of the purchase, and the price to be paid for the same; and it shall be the privilege of any tax-paying citizen of any such city, who shall have evidence that such city is about to be wronged by any such purchase, either by the payment of more than the cash value of said land, or by fraud, or neglect on the part of any one, to remonstrate against the consumma-

School buildings, how constructed.

Loan for wharves, parks, and market spaces

Bonds issued.

How redeemed.

Mayor and council to appoint three citizens to negotiate for all such purchase of land.

Council to advertise before consummating purchase.

Citizens may remonstrate.

Council to decide for or against purchase.

tion of said purchase any time within the aforesaid thirty days; and it shall be the duty of any city council of any such city, upon receiving such remonstrance, to hear in open meeting of said council, all evidence that may be presented in writing for or against the consummation of such purchase; and said city council, after having considered all the evidence offered, shall finally decide for or against such purchase; and if any such purchase of land for any of the aforesaid purposes shall have been consummated by the city council of any such city, after having complied with all the requirements of this act, then and in that case the city council of any such city shall be fully authorized to borrow five hundred thousand dollars, or any part thereof, in manner and form and for the purposes provided for in this act.

Streets and alleys may be vacated or narrowed—when.

§ 13 That the city council of any city or incorporated village of this State on petition filed by any person or persons owning any lot or lots in any such city or incorporated village, praying that any street or streets, alley or alleys, in the immediate vicinity of such lot or lots, may be vacated or narrowed; and the said council may and they are hereby authorized upon hearing and being satisfied that there is good cause for such vacation or narrowing, and it will not be detrimental to the general interests, and that the same should be made, declare such street or streets, alley or alleys vacated or narrowed; provided, no street or alley shall be vacated by any incorporated village council until after the next election of the members of such council.

Concerning canal and ship channels.

§ 14. Any incorporated city whether of the first or second class, shall have power for commercial purposes, when in the judgment of the city council the interests of the city require, to construct, open, excavate or otherwise improve, enlarge, or extend any canal, ship channel or watercourse, and light or keep the same in repair, which may be located within the limits of such city, and which is not owned in whole or in part by the State or by any company or companies, individual or individuals, authorized by law to construct the same, and all power conferred by this section shall be exercised, and necessary taxation imposed in the manner and under the limitations and restrictions as prescribed with respect to streets, alleys, wharves and other public grounds in the act of May 3rd, 1852, aforesaid.

Delinquent taxes—how collected.

§ 15. The city council of any incorporated city or village may order the clerk or other proper officer of the council to certify under his official seal any delinquent tax heretofore or which may hereafter be assessed by said city or village, for opening, grading or otherwise improving any street or alley in said city or village to the auditor of the proper county, which tax so certified, the auditor is hereby required to place on the grand tax duplicate of the county in a separate column, and

the same shall be collected in like manner as State and county taxes.

§ 16. That the fifty-eighth section of said act be and it is hereby so amended as to read as follows: That until otherwise provided by the city council constituted by this act, the numbers, divisions and boundaries of the several wards of cities of the first class, heretofore incorporated, shall remain as fixed by ordinance on the first day of September, A. D., one thousand eight hundred and fifty-one, provided that the city council created by this act, may at any time create additional wards and the boundaries thereof or reduce the number of wards already created and define those now established, alter in such manner as may be deemed expedient; provided, that the city council of all cities of the second class now having one or more wards may divide such city into such number of wards as said council may determine, before the time of the first election under the act to which this is amendatory, and each of such wards shall, at such first election, be entitled to two trustees, to be elected as provided for in the fifty-ninth section of the act to which this is amendatory.

City wards.

§ 17. That the ninety-second section of said act be and it is hereby so amended, as to read as follows: That for the purpose of paying the interest on the public debt of any municipal corporation, the council thereof shall have power, and it is hereby made their duty, to levy and collect annually on the property appraised and returned as aforesaid, a sum not exceeding six mills on the dollar sufficient to pay and satisfy the whole of such interest as the same accrues, which sum, when so paid into the treasury, shall be and remain a specific fund for that purpose only, and shall not be appropriated or used in any other way.

Interest on the city debt—how paid.

§ 18. That the twenty-sixth section of the said act be and it is hereby so amended, as to read as follows: They shall have power to lay off, open, widen, straighten, extend and establish, to improve and keep in order and repair, and to light streets, alleys, public grounds, wharves, landing places, and market spaces; to open and construct and keep in order and repair sewers and drains; to enter upon or take for such of the above purposes as may require it, land or material, and to assess and collect a charge on the owners of any lots or lands, or on the lots or lands through or by which a street, alley or public highway shall pass for the purpose of defraying the expenses of constructing, improving, repairing or lighting such street, alley or public highway, to be in proportion either to the feet front of the lot or land abutting on such street, alley or highway, or to the value of such lot or land, as assessed for taxation under the general law of the State, as such municipal corporation may in each case determine; and they shall also have power to pro-

City council to open and repair streets, alleys, sewers, drains, &c.

In what manner.

To cause rail-
ways to be
lighted.

Manner of
lighting.

When compa-
nies refuse to
light their
tracks, how
council to pro-
ceed.

vide by ordinance for the lighting of any railway, or portion thereof which may be located within the corporate limits of such town or city, in such mode and manner as the city or town council shall prescribe, and when it shall be deemed necessary or proper by any town or city council, to provide for the lighting of any such railway or portion thereof located as aforesaid, they shall pass an ordinance requiring such railroad company or companies, within a specified time, which shall not be less than thirty days, so to light their track or tracks, or such portion thereof as may be designated by such ordinance, and such ordinance shall prescribe the mode and manner in which the same shall be done, the number, style and size of lamp posts, burners, lamps, and all other fixtures and apparatus necessary for such lighting, and the points of location for said lamp posts; and in case the said lighting shall not be done in conformity with the provisions and specifications of such ordinance, or should any railroad company fail or refuse to light its track, or such portion thereof as may be designated within the time limited by the ordinance, the city or town council may proceed immediately to cause such lighting to be done in conformity with the provisions of such ordinance; and such municipal corporation may either by a general ordinance or resolution prescribe the mode in which the charge on any railroad company or companies shall be assessed and determined, such charge when so assessed and determined shall be payable by the railroad company or companies at the time of the assessment, and shall also be a lien upon the lots or land in the provisions of such railroad company or companies, from the time of the assessment; such charge may be collected, and lien enforced by a proceeding at law, or in equity, either in the name of the municipal corporation, or of any person to whom it shall have directed payment to be made; in any such proceeding at law when pleadings are required, it shall be sufficient to declare generally for work and labor done, and materials furnished on the particular railway part or parts thereof; proceedings at law or in equity may be instituted against all the railroad companies, or each or any of them whose tracks may be located as aforesaid, against whom such assessment or charge shall have been made, or to enforce the lien against all the lots or land or such lots or parcel or any number of them affected by any one or several assessments, but the judgment or decree shall be rendered severally or separately for the amount properly chargeable, and any proceeding may be served in the discretion of the court, for the purpose of trial, review or appeal, and in any such proceeding when the court trying and hearing the same shall be satisfied that the work has been done or materials furnished which according to the true intent of the ordinance aforesaid and the provisions of the act would be properly chargeable on the lot or land or against any rail-

road company whose railway or part thereof shall have been so lighted, a recovery shall be had or a charge enforced to the extent of the proper proportion of the value of the work or material which would be chargeable on such lot or land or against such railroad company according to the provisions of such ordinance and of this section, notwithstanding any irregularity, informality or defect, in any assessment on the part of such municipal corporation, or its officers; but in such case the court shall adjudge as to costs as may be deemed proper, and in cases where assessments shall have been regularly made, and payment shall have been neglected or refused at the time when the same was required, any municipal corporation, or any person to whom the said corporation shall have directed payment to be made, shall be entitled to demand, and recover in addition to the amount assessed with interest from the time of assessment, the additional sum of five per cent. penalty to defray the expenses of collection, and which shall be included in the judgment or decree.

Same subject.

§ 19. That the forty-fifth section of said act be and it is hereby so amended as to read as follows: Sec. 45. The said trustees shall have the exclusive supervision and control of all public roads, streets and alleys, sewers and drains constructed or to be constructed within the limits of such special road district; they shall have the power to lay off and establish, to improve, keep in order and repair roads, streets and alleys and to open and construct and keep in order and repair sewers and drains, to enter upon and take for the purpose aforesaid when necessary land or material; to assess and collect a charge for the construction, improvement, or repair of any such road, street or alley; and to carry into effect such powers, and the other powers incident to a corporation for the said special purposes; may make and publish and enforce by-laws and ordinances, and shall have the like rights and remedies in all respects as in this act provided, in relation to other municipal corporations. And for the services performed by any supervisor in his capacity as such, under the direction of the trustees of any such special road district, the same shall be settled and paid for by the trustees of the proper township or townships as in other cases.

Duties of trustees.

Repair of streets, alleys, &c.

Supervisor's compensation.

§ 20. That the forty-second section of said act be, and the same is hereby so amended as to read as follows: Sec. 42. It shall be the duty of the Governor, Auditor, and Secretary of State, or any two of them, at the time of ascertaining the ratio of representation as required by the eleventh section of the said article of the constitution, also to ascertain what cities of the second class, are entitled to become cities of the first class, and what incorporated villages are entitled to become cities, and their proper class, and the Governor shall cause a statement thereof to be prepared by the Secretary of State, which statement he shall cause to be published in some news-

Concerning the grades of cities.

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|--------------------------------------|---|
| How advanced. | <p>paper printed in the city of Columbus, and also in some newspaper printed in each of the cities and incorporated villages, the grade of which shall have been so advanced, and a copy of said statement shall also be transmitted by the Secretary of State to the next session of the General Assembly; provided, however, that before said city or incorporated village shall be advanced as herein provided, the trustees thereof, by resolution certified to the Secretary of State, shall accept of such advanced grade, and therefrom any such city or incorporated village shall at the next regular annual period for the election of municipal officers, proceed to organize according to its new grade by the election of officers properly belonging thereto, and on their election and qualification the term of service of every former officer shall expire. And it shall further be the duty of the Governor, Auditor, and Secretary of State to declare cities of the second class, cities of the first class between decennial periods: <i>Provided</i>, that the application from any city, be accompanied by a resolution adopted by said city council asking to be declared a city of the first class, shall be accompanied with satisfactory evidence showing the population of said city to be over twenty thousand.</p> |
| Between decennial periods. | <p>§ 21. Any town which by the special act of incorporation has been divided into wards, shall be denominated a city of the second class, if the council shall so determine.</p> |
| Incorporated villages. | <p>§ 22. That the powers granted to the council of any city by section sixty-five of the act to which this is amendatory, are hereby granted to the council of any incorporated village containing not less than fifteen hundred inhabitants.</p> |
| Mayor to appoint assistant marshals. | <p>§ 23. That the mayor of any incorporated village shall have power to appoint temporarily as many assistant marshals as he may think necessary, who shall take an oath of office, and may be required to give bond and security to the council thereof for the faithful discharge of their duties, and who shall have the same powers as the chief marshal.</p> |
| Election of Mayor. | <p>§ 24. That section fifty-seven of the act to which this is amendatory, be and the same is hereby so amended as to read as follows: The mayor shall be elected biennially in cities of the first and second class on the first Monday in April by the qualified voters of the city; he shall be a qualified elector and reside within the limits of the city, and shall hold his office during the term for which he shall have been elected and until his successor shall have been elected and qualified; he shall keep an office at some convenient place in the city to be provided by the city council, and shall keep the corporate seal of the city in his charge; he shall sign all commissions, licenses and permits granted by the authority of the city council, and such other acts as by law or ordinance may require his certificate. In case of the death, disability, resignation or other vacation of his office, the city council may by a vote of a majority of all its members, appoint some other person to act, until the expiration of said term or disability.</p> |
| His powers and duties. | |
| When the office vacant, how filled. | |

The mayor of the city shall be its chief executive officer and conservator of its peace, and it shall be his special duty to cause the ordinances and regulations of the city to be faithfully and constantly obeyed. He shall supervise the conduct of all the officers of the city, examine the grounds of all reasonable complaints made against any of them, and cause all their violations of duty or other neglects to be promptly punished or reported to the proper tribunal for correction. He shall have and exercise within the city limits the powers conferred on sheriffs of the counties to suppress disorder and to keep the peace; he shall also perform such other duties compatible with the nature of his office, as the council may from time to time require; he shall receive such salary, payable quarterly out of the city treasury as may be provided by ordinance, but the amount of said salary shall neither be increased nor diminished during any incumbent's term of office.

To supervise
the conduct of
officers.

Further du-
ties.

Salary.

§ 25. That section eighty-five of the act to which this is amendatory, be amended so as to read as follows: Sec. 85. The police court shall always be open for the despatch of business, but may adjourn from day to day, or from time to time; and the mode in which cases shall be brought before the court shall be regulated by the ordinance of the city council, or a rule of the court; the jurors in said court shall have the qualifications of jurors in the court of common pleas, and shall be summoned and empaneled in accordance with the ordinance of the city council, or a rule of the court; the police judge shall adopt such rules of practice and proceedings as will give all parties a proper statement of any charge against them, full opportunity of being heard, but shall at the same time dispatch the business of the court with all convenient speed, and the qualified voters shall elect on the first Monday of April, one thousand eight hundred and fifty-three a prosecuting attorney, and clerk for said court, the prosecuting attorney to hold his office for two years and the clerk to hold his office for three years; each of said officers shall continue in office until his successor is elected and qualified; the salary of said officers to be paid out of the city treasury, and the amount of their compensation shall be fixed by city council."

Police court.

How regula-
ted.

Jurors.

Practice in
such court.

Prosecuting
attorney and
clerk for said
court.

§ 26. That section eighty-nine be amended so as to read as follows: Sec. 89. That the council of any municipal corporation is hereby authorized and required to cause to be certified to the auditor of the county on or before the second Monday of June annually the per centage by them levied on the real and personal property in said corporation, appraised and returned on the grand levy aforesaid; and the said county auditor is hereby authorized and required to place the same on the duplicate of taxes for said county in the same manner as township taxes are now by law placed on said duplicate, which said taxes of said municipal corporation shall be collected by the county treasurer, and paid into the treasury of such cor-

Taxes, how
collected.

Proviso.

Delinquent
taxes, how
collected.

Where limits
comprise a
township, cer-
tain offices
abolished.

Township
treasurer to
transfer all
money, prop-
erty, &c., to
city council.

As to suits for
or against the
city.

poration in the same manner, with the same power and restrictions, and under the same regulations, and in all things as to the sale of real or personal property he shall be authorized, and he is hereby required to act according to the provisions and requisitions of the law for the collection of taxes for State and county purposes; provided that nothing in this act shall be so construed as to prevent any city that may elect to do so from levying and collecting such taxes within their respective corporations, and when any city shall elect to levy and collect such taxes it shall be the duty of the city council to provide by ordinance for the appointment and regulation of the necessary officers to carry the same into effect, and such officers so created shall have all the power, and be under all the restrictions of county auditors, county treasurers, and township assessors, so far as the same shall be applicable to them, except in the sale of delinquent lands, and said city council may order the clerk or other proper officer of the council to certify any delinquent tax assessed by such city to the auditor of the proper county, which delinquent taxes so certified, the auditor is hereby required to place on the grand tax duplicate of the county in a separate column, and the same shall be collected in like manner as other delinquent State and county taxes.

§ 27. That in any city the corporate limits whereof comprise the whole territory of any established township, and wherein a city infirmary has been established, the offices of township trustees and township clerk shall be abolished and cease, from and after the twentieth of March, one thousand eight hundred and fifty-three; and it shall be the duty of the directors of the city infirmary of such city, thereafter to perform, under the control of the city council of such city, all the functions which said township trustees were authorized by law to perform up to said date; and the said directors of the city infirmary are hereby vested ~~will~~ [with] all the powers of such township trustees: Provided, that said powers, as far as they relate to the levying of taxes and the holding of elections, are hereby exclusively transferred to such city council.

§ 28. That all the property, real and personal, together with all the moneys and credits held in possession or under the control of said township trustees, for any purpose whatsoever, on the twentieth day of March, one thousand eight hundred and fifty-three, shall, on said day, vest in said city, and the said township trustees shall then deliver to the city council of such city, all the property, moneys and credits aforesaid, together with the evidences of the same, and a full and final settlement of their accounts. All suits pending and judgments recovered by, in favor of, or against any such township, together with all rights, interests, claims and demands, in favor of, and against the same, may be continued, prosecuted, collected and enforced by or against any such city, as though this act had never

been passed ; and all suits authorized by law to be brought by or against such township or township trustees, shall be prosecuted by or against such city.

§ 29. That the city council of such city may, by ordinance prescribe the duties, and fix the compensation of said directors of the city infirmary, in the exercise of the powers hereby upon them conferred : Provided that the duties so prescribed, do not conflict with any previous acts, relating to the government and management of the Commercial Hospital and Lunatic Asylum of Ohio.

Directors of the city infirmary.

Proviso.

§ 30. That the city council of any city in which gas companies, or gas light and coke companies have been or may hereafter be established, be and are hereby empowered to regulate, by ordinance of such city council, from time to time, the price which such gas light or gas light and coke company, shall charge for any gas furnished by such companies to the citizens, public buildings, streets, lanes or alleys in such cities, and that said gas light or gas light and coke companies shall in no event charge more for any gas furnished to such city, or to individuals than the price specified by ordinance of such city council ; and that such city council shall also have power by ordinance, to regulate and fix the price which such companies shall charge for the rent of their meters.

Gas companies regulated by city council.

Prices fixed.

§ 31. That if such companies shall at any time hereafter be required by any city council as aforesaid to lay pipes and light any street or streets, and shall refuse or neglect for six months after being notified by authority of such city council to lay said pipes and light said streets ; then and in that case such city council may lay pipes and erect gas works for the supply of said streets, and all other streets which are not already lighted ; and the said gas companies, gas light and coke companies, shall thereafter be forever precluded from using or occupying any of the streets not already furnished with gas pipes of such companies ; and such city council may have the right to open any street for the purpose of conveying gas as aforesaid.

Companies refusing to furnish gas, city council may erect gas works.

§ 32. That a neglect to furnish gas to the citizens or other consumers of gas, or to any city by such companies, in conformity to the preceding section of this act, and in accordance with the prices fixed and established by ordinance of such city council, from time to time, shall forfeit all rights of such company under the charter by which it has been established : and any such city council may hereafter proceed to erect or by ordinance empower any person or persons to erect gas works for the supply of gas to such city and its citizens as fully as any gas light or gas light and coke company can now do, and as fully as if such companies had never been created.

Charter of company, when forfeited.

City to erect gas works.

§ 33. That the city council of any city in which gas works are or may hereafter be constructed, shall provide by ordinance for the appointment of one or more gas measurers,

Gas measurer's appointed.

whose duty it shall be to inspect all gas meters and certify to the correctness of all bills made against the consumers of gas, and perform such other duties as may be prescribed by ordinance.

Repealing
clause.

Proviso.

§ 34. That the original sections, twenty-six, forty-two, forty-five, fifty-seven, fifty-eight, seventy-five, ninety, ninety-two, eighty-five, one hundred and eleven, eighty-nine, and ninety-eight of the act entitled "An act for the organization of cities and incorporated villages," passed May 3d, 1852, be and the same are hereby repealed: Provided, that all rights heretofore acquired under said repealed sections, shall not be affected thereby, but the same shall be as effectually preserved as if said sections had not been repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March, 11, 1853.

AN ACT

Supplementary to the act entitled "An act dispensing with proof in certain cases," passed December 18, 1823.

Book accounts
of deceased
persons or
non-residents
of this State,
admitted as
evidence.

Weight of
such evi-
dence.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be competent for the court of justice, upon the trial of any action wherein any claim or defence is founded on book account, on proof of the death of the party in interest making the original entries in such book of accounts, and that the entries are in his hand-writing, to admit said book of original entries as evidence; and if the original entries in said book of accounts have been made by a disinterested person, who, at the time of such trial is deceased, or a non-resident of the State, on proof of such decease or non-residence, and that said entries are in the hand-writing of such person, it shall be competent to admit said book of original entries as evidence, the weight to be given to such evidence in either case, however, being left to the jury or justice to determine.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To provide for the support of Idiots and Insane persons, in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the county commissioners of the respective counties in which there now is, or may hereafter be erected a county infirmary, may provide a separate apartment or apartments, in or adjoining such infirmary, for the safe-keeping and treatment of lunatics and idiots, resident in such county, and who have not been, or cannot be received into either of the lunatic asylums, or who have been discharged therefrom.

Concerning
County Infir-
mary.

Rooms prepa-
red for the
safe-keeping
and treatment
of Idiots and
Insane per-
sons.

§ 2. That it shall be the duties of the directors of the several county infirmaries, as soon as an apartment or apartments are provided, as aforesaid, to admit therein all lunatics and idiots who are or may become a charge upon their respective counties, and provide for their safe-keeping, support and treatment, in such manner as they now do, for the poor under their care, and also to receive and provide for the safe-keeping, support and treatment of such lunatics and idiots, in their respective counties, who, by their guardians or friends, may apply for admission, as pay-patients, under such rules and regulations as the said directors may prescribe.

Duty of the
Directors of
Infirmaries.

Pay patients
received.

§ 3. That all lunatics and idiots confined in the jail of any county in which an apartment or apartments be provided as aforesaid for their reception, shall be transferred by the jailor or other proper person to the county infirmary of the proper county, to be kept, supported and treated as hereinbefore provided.

Lunatics and
Idiots in jails,
to be trans-
ferred to In-
firmary.

§ 4. That nothing herein contained shall be so construed as to prevent any person, whether in a county infirmary or otherwise, from being received into the lunatic asylums of the State, if by any law such person would be otherwise entitled to such reception.

Construction
of this act.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

Supplementary to the act "to provide for the organization of cities and incorporated villages," passed May 3, 1852.

City Council
may borrow
money for erect-
ing public
buildings for
the use of the
county.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever it may be necessary for any city to provide grounds and erect thereon a court house, jail or public offices, for the use of the county within which it may be situated, it shall and may be lawful for the council of such city to borrow such an amount of money as may be required then and for that purpose, to issue the bonds of the city, bearing such rate of interest and payable at such time and place as to the council shall seem proper, and pledge the faith of the city for the payment thereof; provided, however, that all moneys, so borrowed, shall be used and applied exclusively to the purchase of the ground, and the erection of the buildings thereon, as aforesaid, and to no other purpose whatever.

Proviso.

Interest and
principal,
how paid.

§ 2. For the purpose of paying the interest upon the loan provided for in the last section, and also the principal when the same shall fall due, the council of such city is hereby authorized, in addition to the other taxes allowed by law to levy and assess all such taxes as may from time to time be necessary for that purpose, which taxes shall be certified to the county auditor, and collected in the same manner as other taxes of said city.

Concerning
streets, alleys,
&c., when &
how opened

§ 3. That section forty-six of the act entitled "An act to provide for the organization of cities and incorporated villages," passed May 3, 1852, be amended so as to read as follows: Section 46. No order directing the opening of a new road, street or alley, or the taking of any land for the improvement, straightening or changing any road, street or alley, shall be made by the said trustees, unless they shall all concur therein, and no order shall be made for the improvement or repairs of any road, street, or alley, except on the petition of two-thirds of the resident owners of the lots of land through or by which such road, street or alley, or part thereof, to be improved or repaired, shall pass.

Repaired on
petition of
owners of
lots.

Repealing
clause.

§ 4. That section forty-six of the act entitled "An act to provide for the organization of cities and incorporated villages," passed May third, one thousand eight hundred and fifty-two, be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Concerning Divorce and Alimony.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the several courts of common pleas in this State, shall have the cognizance of granting divorces, for the following causes: Divorce may be had, for what causes.

First: Where either of the parties had a former wife or husband living, at the time of solemnizing the second marriage.

Second: Where either of the parties shall have been wilfully absent from the other three years.

Third: Adultery.

Fourth: Impotency.

Fifth: Extreme cruelty.

Sixth: Fraudulent contract.

Seventh: Gross neglect of duty.

Eighth: Habitual drunkenness for three years.

Ninth: Where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary of this State, or state prison of any other State or Territory of the United States, or the District of Columbia, for any violation of the laws of the United States; or where either party has been or shall hereafter be sentenced to imprisonment and actually imprisoned in the penitentiary in this State, for any violation of the criminal laws of this State, or in the penitentiary or state prison of any of the United States, or either of the territories thereof, or the District of Columbia, for any crime or offence against the laws of either of said States or Territories, or of the District of Columbia; Provided such crime or offence against the laws of such State, Territory, or District of Columbia, be of the same character or grade as is or may be by the laws of this State punished by imprisonment in the penitentiary; And, provided, also, that all applications for divorce under the ninth clause of this section, shall be made during the imprisonment of the adverse party.

§ 2. That in addition to the causes of divorce already declared in this act, the several courts of common pleas of this State shall have power to grant a divorce in favor of a party applying for the same, whenever it shall be made to appear that the husband or wife of such party has obtained a decree of divorce in any of the courts of any other State, by virtue of which the party who shall have obtained such decree, shall have been released from the obligation of the marriage contract, while the same remains binding upon the other party.

Divorce obtained in other State a cause.

**Complainant
to file a peti-
tion in clerk's
office.**

**Clerk to issue
summons.**

**Proceedings
when defend-
ant is not res-
ident in the
county.**

**Proceedings
of the court.**

Same subject,

§ 3. That in all cases where a divorce shall be applied for, the complainant shall file his or her petition in the office of the clerk of the court of the proper county, at least two months before the sitting of said court, which petition shall in all cases distinctly set forth the true cause of complaint, and if the adverse party is a resident of the county in which the petition is filed, the clerk of said court shall issue a summons directed to the sheriff of the county, which together with a copy of the petition, shall be served on the adverse party at least six weeks before the sitting of said court; but if the party defendant is not a resident of the county in which the petition shall be filed, then notice shall be given of the pendency of said petition by publication in some newspaper of general circulation, for the term of six consecutive weeks, which notice shall contain the substance and prayer of said petition, and in such case a summons and a copy of the petition shall forthwith on the filing of said petition, be deposited in the post-office, directed to the party defendant, at his or her place of residence, unless it shall be made to appear to the satisfaction of said court, by affidavit or otherwise, that such residence is neither known to said applicant, nor can with reasonable diligence be ascertained by him or her; or if the adverse party shall reside in any other county of this State, the applicant may, at his or her election, give notice by service of a summons and copy of the petition, which service shall be made at least six weeks before the sitting of said court: provided, that nothing in this act shall be so construed as to prevent a hearing or decision of the cause at the first term after the petition shall be filed.

§ 4. The party by such summons shall be required to appear and answer said petition, which answer shall be received without oath, and if the party complained of shall not appear, or, appearing, shall admit or deny the allegations in said petition, the court shall thereupon proceed to hear and determine the same, and if, upon hearing any or all of the charges in said petition to be confined to the causes enumerated in the first section of this act, it shall, by disinterested testimony, be proved to the satisfaction of said court, the court may proceed to pronounce the marriage contract dissolved, and both of the parties released from the obligations of the same, provided, that the dissolution of such marriage shall in no wise affect the legitimacy of the children thereof; and the court shall make such order for the disposition, care, and maintenance of the children of such marriage, if any there be, as shall be just and reasonable.

§ 5. That upon the hearing of petitions for divorce, the court may permit proofs of the admissions of the parties to be received in evidence, carefully excluding such as they shall find reason to believe have been obtained by connivance, fraud, coercion, or other improper means.

§ 6. That in all cases where an application is made for divorce, under the provisions of this act, proof of co-habitation, and reputation of the marriage of the parties shall be admitted, and at the discretion of the court or jury trying the cause, may be received as sufficient evidence of such marriage, any law, usage or custom to the contrary notwithstanding.

Evidence of marriage.

§ 7. That where a divorce shall be granted, by reason of the aggression of the husband, the wife shall be restored to all her lands, tenements and hereditaments, not previously disposed of, and to her maiden name if she so desires, and shall be allowed such alimony out of her husband's real and personal property, as the court shall think reasonable, having due regard to the property which came to him by marriage, and the value of his real and personal estate, at the time of said divorce, which alimony may be allowed to her in real or personal property, or both, or by decreeing to her such sum of money, payable either in gross, or instalments, as the court may deem just and equitable, and if the wife survive her husband, she shall also be entitled to her right of dower in the real estate of her husband, not allowed to her as alimony, of which he was seized at any time during the coverture and to which she had not relinquished her right of dower; but if the divorce shall arise by reason of the aggression of the wife, she shall be barred of all right of dower in the lands of which her husband shall be seized at the time of the filing of the petition for divorce, or which he may thereafter acquire, whether there be issue or not, and the court shall order to her, restoration of the whole of her lands, tenements or hereditaments not previously disposed of, and also such share of the husband's real or personal property, or both, as to such court may appear just and reasonable.

Divorce and alimony in favor of the wife.

Not granted when wife the aggressor.

§ 8. That all applications for divorce, or for alimony, under the provisions of this act, shall be made in the county where the complainant bona fide resides at the time of making such application, or in the county where the cause of complaint arose or took place; and the court shall hear and determine the same, whether the marriage took place or the cause of divorce occurred within the State or elsewhere: Provided, the petitioner shall be a resident of the State, at least one year next before the filing of his or her petition in the clerk's office of said court.

Application for divorce—where made.

Proviso.

§ 9. That the said court shall have power to grant alimony to the wife for her sustenance during the pendency of a petition for divorce filed for any of the causes aforesaid.

Alimony to wife during pendency of petition,

§ 10. That the wife may file her petition as aforesaid, in the court of common pleas for alimony alone, without the prayer for the dissolution of the marriage contract, for the following causes, to wit: first, adultery; second, gross neglect of duty; third, abandonment of the wife without good cause;

Petition for alimony alone.

For what causes.

fourth, when there is a separation in consequence of ill treatment on the part of the husband; fifth, habitual drunkenness; and sixth, confinement in the penitentiary of Ohio, or in the penitentiary or State prison of any of the United States or either of the territories thereof, or the District of Columbia, for any crime or offence of the same character or grade as is or may be by the laws of this State, punished with imprisonment in the penitentiary, in which case the application shall be made while the husband is so confined.

Proceedings
of court on pe-
tition for ali-
mony.

§ 11. The proceedings on said petition for alimony alone, shall in all respects be conducted as in applications for divorce, under the provisions of this act, and the said court shall, upon satisfactory proof of any or all of the charges in said petition, make such order for the disposition, care, and maintenance of the children of such marriage, if any there be, as shall be just and reasonable, and restore to the wife all her lands, tenements, and hereditaments not previously disposed of, and shall give judgment in her favor for such alimony out of her husband's real and personal property as may be just and equitable, to be allowed to her in real or personal property, or both, or in moneys payable either in gross or in instalments, and the court shall also, by their said judgment, vest in her the right and power to acquire, hold, manage and dispose of property, money, and choses in action, and to bring and maintain suits in her own behalf, free from the control or interference of her said husband; or the same may be vested in trustees for her use and benefit.

Residence.

§ 12. That when the wife shall file her petition under the provisions of this act, praying for a divorce from her husband, or for alimony alone, the residence of her husband shall not be so construed as to preclude her from the provisions of this act.

Change of
venue—when
granted.

§ 13. A change of venue shall be allowed by any court in which any petition for divorce or alimony may be filed for the hearing and determination of the same, upon the petitioner making application therefor, and making an affidavit that in his or her behalf a fair and impartial hearing and determination cannot be had before the court in which the petition is filed, and in case of such change of venue, the cause shall be removed to any county of the same judicial district for hearing and determination.

The Court to
restrain the
husband on
petition of the
wife.

§ 14. That any married woman may file her petition in the court of common pleas setting forth that her husband, from habitual intemperance or any other cause, is about to waste and squander the property, legal or equitable, money, credits and choses in action, to which she is entitled in her own right, or any part thereof, or is proceeding fraudulently to convert the same, or any part thereof, to his own use, for the purpose of placing the same beyond her reach and depriving her of the benefit thereof, and the court, upon the hearing of the case

may enjoin the husband from disposing of or otherwise interfering with such property, money, credits, and choses in action, and may appoint a receiver to manage and control the same for the benefit of the wife, and may also make such other order in the premises as they may deem just and proper; and upon the filing of such petition, a provisional injunction may be allowed as in other cases; and such petition shall be filed in the county where said petitioner resides, and the husband of said petitioner shall be made a party defendant to said petition in the same manner as is provided for by the second section of this act, in the case of a petition for divorce.

§ 15. In all applications for divorce, or for alimony alone, and in cases where the petition is filed under the eleventh section of this act, where the witnesses shall reside in the county in which the application is made, or the petition filed, they shall be examined in open court; but if they shall reside without the county, or are unable to attend court, their depositions may be taken as in other cases; but when the adverse party shall not reside within the county where the application or petition is pending, or in an adjoining county, or shall not have an attorney residing in the county where such application or petition is pending, or in an adjoining county, the usual notice of the time and place of taking such depositions, shall not be required, but in such cases notice of the time and place of taking such depositions shall be given by publication in some newspaper circulating in the county where the case is pending, for three consecutive weeks before the time of taking such depositions, and a copy of such notice shall, at or before the first publication thereof, be deposited in the post office, properly directed to the party defendant, at his or her place of residence, when such residence is known to the petitioner, or can with reasonable diligence be ascertained by him or her.

Concerning witnesses; how examined.

Depositions.

§ 16. That in the case of petition for divorce, or petition for alimony alone, no appeal shall be allowed from any judgment or order of the court of common pleas to the district court.

No appeal allowed for divorce.

§ 17. That in cases arising under the eleventh section of this act, either party may appeal from any final judgment or order of the court of common pleas to the district court, as in other cases; but when such appeal is taken by the petitioner, she shall not be required to give bond.

Appeal, when Alimony alone demanded.

§ 18. That the act entitled "An act concerning divorce and alimony," passed March 6th, A. D. 1840, and an act entitled "An act to amend an act concerning divorce and alimony," passed March 29th, 1841, and an act entitled "An act to amend the act concerning divorce and alimony," passed March 6th, A. D. 1840, which was passed March 13th, A. D. 1843, and an act entitled "An act to amend the act

Repealing clause.

Proviso.

concerning divorce and alimony," passed March 6th, 1840, which was passed March 2, A. D. 1846, and also an act entitled "An act authorizing the granting of alimony," passed March 24th, 1851, be and the same are hereby repealed; Provided that all causes of divorce or alimony now existing under the provisions of the acts aforesaid, are hereby expressly reserved and protected; but in all cases now pending or hereafter commenced under said acts, the proceedings shall be conducted according to the provisions of this act.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To fix and provide for the terms of the District Courts in the Fourth Circuit, being composed of the Ninth and Eighth Common Pleas Districts of Ohio.

Terms of the
District
Court, Fourth
District.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the terms of the district court shall be holden in the several counties of said common pleas districts as follows:

NINTH COMMON PLEAS DISTRICT.

Ninth Com-
mon Pleas
District.

In the county of Geauga, on the fourteenth day of April;
In the county of Lake, on the eighteenth day of April;
In the county of Ashtabula, on the twenty-first day of April;
In the county of Trumbull, on the twenty-sixth day of April;
In the county of Mahoning, on the fourth day of May;
In the county of Columbiana, on the ninth day of May;
In the county of Carroll, on the sixteenth day of May;
In the county of Stark, on the twentieth day of May;
In the county of Portage, on the twenty-sixth day of May;

EIGHTH COMMON PLEAS DISTRICT.

Eighth Com-
mon Pleas
District.

In the county of Tuscarawas, on the first day of August;
In the county of Harrison, on the fifth day of August;
In the county of Jefferson on the tenth day of August;
In the county of Belmont, on the seventeenth day of August;

In the county of Monroe, on the twenty-fourth day of August;

In the county of Noble, on the twenty-ninth day of August;

In the county of Morgan, on the first day of September;

In the county of Muskingum, on the seventh day of September;

In the county of Guernsey, on the fourteenth day of September.

§ 2. If from any cause a failure to hold the prescribed term of the district court in any county should occur, it shall be the duty of the judges of the district court, on giving thirty days previous notice in such county, to hold a special term of the district court in such county, within the same year, to dispose of the business pending; and should important business arise in the district court in any county which cannot be disposed of at the stated term of the court for want of time, it shall be lawful for the judges of the district court to hold a special term of the district court in such county, at such time as the court shall determine, on giving thirty days previous notice thereof in the county.

Special terms
of the Dis-
trict Court.

§ 3. Should any day named herein for the holding of said district court upon Sunday, the said court shall commence and holden on the next day.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To provide for the publication of the general laws in newspapers, and to repeal an act entitled "An act to provide for an early publication of the laws, and for other purposes," passed March 23d, 1850.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the Secretary of State shall, at least ten days before the meeting of each regular session of the General Assembly, contract with the publisher of one English and one German newspaper, who shall be the lowest bidder therefor, to publish all the laws of a general nature that may be passed by

Secretary of
State to con-
tract for pub-
lishing the
laws.

Contractor to pay for transporting copies of laws to be published.

Copies of papers, to whom sent.

Printing the laws in counties.

Auditor to read and compare the laws when printed.

Publisher of the laws to file his account—where.

Form of affidavit.

Auditor to draw on the county treasurer for such account.

State printer to file his account with the Auditor of State.

the Legislature next succeeding such contract, and which will go into effect before the same can be published in book form and distributed as required by law. The Secretary of State shall require of the persons who may contract to publish the laws under this section, to pay all expenses for the transportation of the copies of all laws to be published, from the office of the Secretary of State to the office of publication, and to forward to the clerk of the court of common pleas, auditor, probate judge, and prosecuting attorney, of each county, a copy of each newspaper in which any law shall be published, without delay.

§ 2. That the auditor, probate judge, and prosecuting attorney of each county may contract for the publication of such only of the general laws of the present and each succeeding Legislature, as they shall deem of general interest to the people of their respective counties, to justify the expense of publication, and in not more than two weekly or daily newspapers printed therein, and also in one German newspaper, if there be one in such county, at a price not exceeding sixty cents per thousand ems, to be paid out of their respective county treasuries, as hereinafter provided.

§ 3. That it shall be the duty of the auditors of the several counties in which contracts may be made for the publication of the general laws under section two, to read and compare said laws, and see that they are printed correctly.

§ 4. That each person publishing the general laws under section two, shall file his account with the auditor of the proper county, which account shall be accompanied with one copy of each newspaper containing said laws, and also his affidavit in the following form: I, ———, do solemnly swear or affirm, (as the case may be,) that the general laws, a copy of which is herewith presented, were published in the ———, a newspaper printed by me in the county of ———, and that the same contain ——— thousand ems, and for which publication I am entitled to the sum of ———, for said publication, according to contract.

(Signed) _____

State of Ohio, ——— county.

Sworn to and subscribed before me, this ——— day of ———.

§ 5. That upon the filing of any account and vouchers, as provided for in the preceding section, the Auditor with whom the same shall be filed, shall draw an order on the treasurer of the proper county for the proper amount, payable out of any money in the county treasury not otherwise appropriated.

§ 6. The person who shall publish the laws, and furnish the necessary copies, in compliance with the first section of this act, shall file his account and vouchers with the auditor of

State, in the same manner as such accounts and vouchers are filed with the county auditors; and the auditor of State shall draw upon the State treasury for the amount thereof, payable out of any moneys appropriated for State printing. How paid.

§ 7. That the Secretary of State is hereby directed to contract with the lowest bidder, for the publication of such of the general laws of the present session, as will go into effect before the same can be published and distributed in book form as provided by law, in one English and one German newspaper, the contractor for which shall be required to forward copies of the same to the county officers, and shall be paid therefor out of the State treasury, in the same manner as provided in the foregoing section. Printing of the laws of the present session.

§ 8. That the act entitled an "an act to provide for an early publication of the laws and for other purposes," passed March 23d, 1850, be and the same is hereby repealed. Repealing clause.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

Fixing and providing for the term of the supreme court of the State of Ohio, and authorizing special terms thereof.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be the duty of the judges of the supreme court of the State of Ohio, to meet annually hereafter in the city of Columbus, on the first Monday of December, to hold a term of the supreme court. Supreme judges to meet in Columbus annually.

§ 2. That the supreme court, when no term of the district court is required by law to be held, may, in addition to the term now provided by law, hold special sessions at such times and places as the judges, or a majority of them, may from time to time determine, thirty days notice of the time and place of each special session to be given by said judges, or a majority of them, by advertisement in two newspapers published in the city of Columbus; and the court may make all necessary Special terms.

Notice to be given,

Process, how
served.

Crier may
serve process.

Repealing
clause.

orders for the return of process and the transmission of the papers and files of said court to and from the place of holding such special term. Process issuing out of the supreme court, shall be directed to the sheriff or other proper officer of the county in which the same is to be executed, who shall duly execute and return the same; Provided, however, that the crier of said court shall have power to serve any rule, order, warrant, notice, or citation, issuing out of said court, and shall receive for such service the same fees or compensation, as other officers are entitled to for the like services.

§ 3. That section one of an act entitled "an act relating to the organization of courts of justice, and their powers and duties," be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To amend an act entitled "an act to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1st, 1852.

Stockholders
of incorpora-
tions individ-
ually liable
for company's
debts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the seventy-ninth section of the act, to which this is an amendment be so amended as to read as follows: Sec. 79. All stockholders of any joint stock company, organized under the provisions of this act except as hereinbefore provided, shall be deemed and held individually liable for all the debts due and owing by said company, and the trustees or directors of every society or association incorporated under the provisions of the sixty-sixth section of this act, shall be deemed and held individually liable for all debts contracted by them for their respective societies or associations.

Repealing
section.

§ 2. That the seventy-ninth section of the aforesaid act be, and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Authorizing the election of one additional Judge of the Court of Common Pleas in the County of Cuyahoga, composing the third subdivision of the Fourth Judicial District.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the Fourth Judicial District there shall be one additional judge of the court of common pleas, who shall be a resident of the third subdivision of said district, being the county of Cuyahoga, and be elected by the qualified voters of said county at the next annual election for State and county officers, in the same manner and for the same term, as is prescribed by law for the election of other judges of the court of common pleas, and shall be entitled to receive the same salary; and when so elected and qualified, shall have in all respects the same jurisdiction, possess the same powers, and discharge the same duties, as are conferred or enjoined by the constitution and laws of the State upon other judges of said courts; and any vacancy that may occur in the office of such additional judge, whether by expiration of his term or otherwise, shall be filled as in other cases.

One additional judge of common pleas in Cuyahoga County.

His powers and duties the same as other judges.

§ 2. That the judges of said court of common pleas in said third subdivision, while holding court in the same, may sit separately or otherwise, as they may at any time deem it expedient, and when sitting together, the oldest judge by commission shall preside, and they may prescribe the mode of keeping and authenticating the minutes of proceedings had before them, or either of them, and may at the beginning of each term, and at all times thereafter, when necessary, classify and distribute between themselves for trial and determination, the business pending in said court as they shall deem most expedient for the public interests; and may, from time to time, adopt and publish rules of practice, regulating the docketing of causes and motions, the return of process, the time and manner of filing pleadings, the entering and opening of defaults, the setting of causes and matters for trial or hearing, and also such other matters of practice as may be necessary to the due administration of justice, not inconsistent with the laws of this State, causing all such rules to be entered upon their journals.

The judges may sit together or separately.

Who to preside.

May divide the business.

Rules of practice.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Defining the mode of laying out and establishing State Roads.

- How roads laid out.** § 1. *Be it enacted by the General Assembly of the State of Ohio,* That all State roads to be hereafter laid out, shall be by petition to the county commissioners, as hereinafter provided.
- Contents of petition.** § 2. That all petitions for any State road shall specify the place of the beginning, the intermediate points, if any, and the place of termination of said road.
- Commissioners to appoint viewers.** § 3. That on application by petition, signed by at least twenty freeholders of each county through which it may be proposed to lay out and establish any State road, the board of commissioners of each of said counties shall appoint one disinterested freeholder of their respective counties as commissioners to view and survey said road.
- Bond for payment of all expenses.** § 4. That previous to granting an order on any petition presented as aforesaid, one of the parties in each county interested in the location of such road, shall enter into a bond with two or more responsible freeholders in said county, as securities, to the satisfaction of the county commissioners, payable to the State of Ohio, and conditioned for the payment of all expenses which may accrue in the location of said road, in case the same should not be established a public highway.
- On filing petition, Surveyor and Assistants appointed.** § 5. That, on the filing of a petition and bond, agreeably to the provisions of the third and fourth sections of this act, which shall be at the same meeting of the commissioners of all the counties interested in the location of the road, the commissioners shall issue their order, directing the commissioners by them appointed, to meet at the place of the beginning of said road, on the first Wednesday of the month then next ensuing, and the commissioners, when met as before directed, shall employ a skillful surveyor, chain-carriers, a marker, and other assistants, if necessary, and proceed to the discharge of the duties of their appointments respectively: *Provided,* that each commissioner, surveyor and chain-carrier shall, before entering on the duties of his appointment, take an oath or affirmation, to discharge his duties faithfully and according to law.
- Proviso.**
- Road laid on the best and most direct route.** § 6. That each state road shall be laid out from the place of beginning to the place of termination on the most direct route that suitable ground can be found, whereon to establish the same, always having regard to the intermediate points, if any, in such road; and all state roads that shall be hereafter established agreeably to the provisions of this act, shall be opened and considered public highways sixty feet wide.

§ 7. That the commissioners appointed to lay out and establish any state road, shall cause the same to be correctly surveyed and marked throughout the whole distance of the same, and note the courses and distances thereof; and at the end of each mile, shall mark the number thereof, on a tree or monument, erected by them for that purpose. And the commissioners and surveyor of each road shall make a certified return of the survey and plat of the whole length of said road, specifying, in said return, the distance the same may have been laid out in each county, and whether, in their opinion, the public convenience requires the establishment of said road, or any part thereof. One complete copy of which return shall be signed by a majority of the commissioners and the surveyor, and immediately be deposited in the commissioners' office in each county in which any part of said road shall be laid out; and the auditor of the said county shall file the same in his office.

Manner of survey.

Return of survey and plat.

Filed in auditor's office.

§ 8. That in case the commissioners report in favor of the establishment of such a road, the county commissioners of the respective counties shall, at their next session after the filing of said report, order the auditor to cause a notice thereof to be published in some newspaper in general circulation in said county, for four consecutive weeks before the next meeting of the board, notifying all the parties interested in the establishment of the same, that the commissioners of the said counties would hear the parties in favor of or against the establishment of said road, and the application for damages of any person on account of the location of said road through his, her or their lands; Provided that all persons who do not make application for damages at the next regular session of the commissioners, after the publication of said notice, shall be considered and held to have released all their claim to damages by reason of the location of said road; Provided, further, that if there be any lands, the owners of which have not granted the right of way, nor filed their application for damages with the county commissioners, the whole case shall be continued to the next regular session of the commissioners, and they shall again order the auditor to cause notice to such owners and all other persons interested, to be published in some newspaper in general circulation in the county, for four consecutive weeks, before their next meeting, that they will, at such meeting, hear all applications for damages.

Notice to be published when report is in favor road.

Application for damages.

When right of way not granted.

Notice again given.

§ 9. That if any person or persons shall consider themselves aggrieved by the location of said road through his, her or their premises, such person or persons shall file a petition in writing, setting forth the premises on which they claim damages, with the commissioners of the proper county, at their next regular session after the publication of the notice provided for in the preceding section; and said commissioners shall appoint a jury of three disinterested freeholders of the county

Petition filed for damages.

Jury appointed to assess all damages.

whose duty it shall be, after having taken an oath or affirmation to faithfully and impartially discharge the duties imposed upon them by this act, to proceed to view the said road the entire distance the same may have been located through the premises of the complainant or complainants, and of minors, idiots, lunatics or insane persons, where the same are known, and to assess the compensation to be paid in money for the property sought to be appropriated, without deduction for benefits arising from the location of said road; Provided, however, that it shall be lawful for the petitioners for such road, or any one of them, to obtain a relinquishment of damages and right of way from any person or persons through whose land said road may be located.

**Damages,
when and how
paid.**

§ 10. That if the commissioners shall be satisfied that the amount so assessed and determined by the jury aforesaid be just and equitable, and that said road or any part thereof will in their opinion be of sufficient importance to the public to cause the damages to be paid by the county, they shall order the same to be paid the petitioner from the county treasury; but if in their opinion the said road is not of sufficient importance to the public, to cause the same to be paid by the county, they may refuse to establish the same a public highway; unless the damages and expenses are paid by the petitioners. But if there be no applications for damages, or the damages are paid by the county or petitioners, then and in either case, the commissioners may establish the same a public highway, and order the same to be recorded.

**Compensation
to officers.**

§ 11. That the following persons required to render services under this act, shall receive compensation for each day they shall necessarily be employed, as follows, to wit: commissioners two dollars per day, chain-carriers, markers and other assistants, one dollar each, and surveyors two dollars and fifty cents, to be charged as costs and expenses; the commissioners to be paid out of the county treasury of their respective counties, on the order of the county auditor; and the surveyor, marker, chain-carriers, and other assistants, shall be equally divided among all the counties interested, and paid out of the county treasury of the respective counties, on the order of the county auditors.

**Appeal for
damages to
probate court.**

§ 12. That an appeal from the final decision of the commissioners, on any petition for damages sustained by the location of any state road, as provided for by this act, shall be allowed to the probate court of the proper county; Provided, that notice of such appeal be given by the appellant or appellants, during the same session of the commissioners, at which such said decision was made, and the appellant or appellants shall, within ten days thereafter, enter into bond with good and sufficient security, to be approved by the county auditor, for the payment of all costs and expenses, arising from, or in

**Appellant to
give bond.**

consequence of such appeal; and the appellant shall, within five days thereafter, deliver to the probate judge, a transcript of the proceedings had before the commissioners; and upon the reception of the said transcript, the judge shall immediately issue a writ of summons upon such transcript against the obligors in the bond filed under the fourth section of this act, which writ shall be served and returned as other writs of like character; and in such suits the appellant shall be plaintiff and the said obligors defendants; and upon the return of service of such writ, the judge shall issue a venire for a jury of six disinterested freeholders of the county, who, after taking an oath or affirmation, faithfully and impartially to discharge the duties of their appointment, shall proceed, on the day named in said venire, to view and determine the matter complained of; and without delay deliver their decision, in writing, to the probate judge, who shall enter the same on record, with the former proceedings; and certify the decision obtained in said court to the county auditor, and the decision, made and entered on record, shall be final, except as hereinafter provided.

Proceedings
before the probate courts.

§ 13. That in all cases of appeal from the final decision of the county commissioners, as provided in the twelfth section of this act, the appellant or appellants shall pay all costs that may accrue in consequence of said appeal, unless the award rendered by the jury appointed by the probate judge shall exceed in amount the award rendered by the jury appointed by the county commissioners.

Costs, how paid.

§ 14. That if upon the reception of the decision obtained in the probate court, the county commissioners shall not deem such road of sufficient importance to cause the expenses incurred and damages assessed in the probate court, to be paid by the county, they may refuse to establish the same, unless the parties interested in the location of said road shall pay or cause to be paid, before the opening of said road to the satisfaction of the county commissioners, in case said road is established a highway, all expenses incurred and damages assessed; Provided, however, it shall be lawful for the commissioners, if in their opinion a part only of said road will be of public utility, to record and establish such useful part, and reject the residue, in case it be capable of division.

Discretion of Commissioners to establish road.

§ 15. That in case such expense and damages are paid or secured to be paid as aforesaid, or the commissioners direct the same to be paid by the county, then and in either case, they shall enter an order that said road be established a public highway.

Road a public highway, when.

§ 16. That for their services required by the twelfth and thirteenth sections of this act, the officers and other persons required to perform services, shall each be entitled to the same fees as they are entitled to by law for like services in other cases; the auditors to be paid out of the county treasury, and

Compensation for officers.

the judge and others entitled to fees, to be taxed in the bill of costs in the cause in court.

Commissioners may narrow roads on petition.

§ 17. That it shall be lawful for the county commissioners of any county in this State, upon notice given in some newspaper in general circulation in the county, for four consecutive weeks, and on petition being presented to them, signed by at least twelve freeholders of the county, for lessening or reducing the width of any state road which now is or may hereafter be laid out and established, if the commissioners shall deem it just and proper so to do, to reduce the width of any such road, or any part thereof, to any width not less than forty feet, and shall order the county auditor to make a record of the same; Provided, that the commissioners shall, previous to making any order for the lessening or reducing the width of any state road, as provided for by this section, appoint three disinterested citizens of the county, to view and report to them, under oath or affirmation, as to the utility or inutility of of such proposed change, and also the width which in their opinion would be necessary.

Proviso.

Repealing clause.

§ 18. That an act entitled "An act defining the mode of laying out and establishing state roads, and changing their direction in certain cases," passed March 14th, 1831; an act entitled "An act to amend an act entitled 'An act defining the mode of laying out and establishing state roads, and changing their direction in certain cases,' " passed March 5, 1835; an act entitled "An act to amend an act defining the mode of laying out and establishing state roads, and changing their direction in certain cases," passed March 20, 1841; an act entitled "An act to authorize the county commissioners in this State to lay out and establish state roads," passed February 27th, 1846, be, and the same are hereby repealed; Provided, however, the repeal of said acts shall not affect any act done, or any right or liability accruing or accrued, or any suit, matter or proceeding had or commenced under the provisions of said acts.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

To authorize Religious Societies to dispose of Real Estate in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That when any real estate shall have or may hereafter be bequeathed, purchased, donated, or otherwise entrusted to any religious society in this State, or to any of the trustees or officers of any such society for the use and benefit of such society, or for any other purpose, and such society shall be desirous to sell, exchange, or encumber by mortgage or otherwise, any such real estate, it shall be lawful for the court of common pleas of the proper county, upon good cause shown, upon petition of any such society, or some person authorized by them, to make an order authorizing the sale or encumbrance of any such real estate, and said court may include in such order directions how the proceeds of such sale or encumbrance shall be appropriated or invested; Provided, such order shall in no case be inconsistent with the original terms upon which such real estate became invested in or entrusted to such religious society.

Religious Societies may sell real estate on petition.

Manner of proceeding.

§ 2. That where any religious society shall petition as is provided for in the preceding section, all persons who may have a vested, contingent or a reversionary interest in the real estate sought to be sold or encumbered, shall be made parties to said petition, and such parties shall be notified of such petition in the same manner as is or may be provided for in cases of petitions for partition of real estate; Provided that the provisions of this act shall not extend to any grounds used or occupied as burial places for the dead.

Persons interested to be parties to the petition.

Proviso.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

Supplemental to the "act to enable the Trustees of Colleges, Academies, Universities, and other institutions for the purpose of promoting education to become bodies corporate," passed April 9, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever three or more persons shall desire to

Trustees of colleges, &c., may become incorporated.

Manner of proceeding.

create a board of trustees to become incorporated as the trustees of a college endowment fund, they shall do so in the following manner, to wit: Whenever at any meeting called for that purpose, the said persons, at least three of whom shall be residents of this State, not less than three in number as aforesaid, shall resolve to become a body politic and corporate, having a seal and a corporate name, whereby they may sue and be sued in courts of justice, in this State, they shall prepare a statement setting forth the name by which they shall be called, the amount of said fund, and the manner in which, and the distinct uses to which, the said fund shall be applied whether within or without this State, together with the names of the persons who shall act as trustees, which said statement shall be subscribed by all the persons composing said meeting, in the presence of some magistrate or judicial officer having a seal, who shall attest the signing the same and recorded in the office of the recorder of deeds in the county where said meeting was held, and thereupon the persons named in said statement, as trustees, and their successors in office, shall become a body corporate and politic for the purposes in said statement named and specified, and a certified copy of said record under the hand and seal of the recorder of said county, shall at all times be evidence of the existence of said corporation.

Money applied to any object not inconsistent with education.

§ 2. That in any case, where in the original statement in the first section provided for, it is contemplated that the fund may be applied to any object not inconsistent with the purposes of education different from that particularly specified in said statement, the trustees above named, or their successors in office, may apply to the court of common pleas in the county where the record hereinbefore provided for was made, for privilege to make such change, designating particularly the purposes to which it is proposed to apply the same; and the said court, on being satisfied that such change is not inconsistent with the object of the original creation and institution of said fund, shall authorize and sanction said change.

Corporation perpetual.

§ 3. That the said board of trustees, and their successors in office, shall be a body corporate and politic, with perpetual succession, and they shall hold their offices for such terms, and shall receive their appointments in such manner, as shall be designated in the statement on record in the office of the recorder of deeds as hereinbefore provided by the first section of this act.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Supplementary to an "act to provide for the creation and regulation of incorporated companies in the State of Ohio." passed May 1, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the directors of any turnpike or plank road company heretofore incorporated, or that may hereafter be formed under any law of this State, are hereby authorized to open books of subscription along the line of any such road for the purpose of raising additional stock for the completion, extension, planking, or otherwise improving or repairing any such road, and shall be governed in opening said books of subscription and collecting the same as provided for in the 28th section of the act to which this is supplementary.

Directors may open books for additional stock

How governed.

§ 2. That the directors of any such company shall be and they are hereby authorized, when they plank any such road, to place the plank in the centre or on either side of said road, as they may deem for the best interest of the public.

Manner of placing the plank

§ 3. That so soon as any such company shall have completed five miles together in any part of the road, they shall, in all respects, govern themselves in the manner prescribed by the thirty-fifth and thirty-sixth sections of the act to which this is a supplement.

Company—how governed when five miles of road is completed.

§ 4. That whenever any turnpike or plank road company may deem it expedient or necessary in laying out or building a plank road, for which they have become incorporated, to enter upon and take possession of any road, street, alley, or bridge, they shall present to the commissioners of the county in which such road, street, alley or bridge, are or may be situated, signed by at least twelve citizens living upon or being interested in such road, street, alley or bridge, and shall cause a notice to be published in some newspaper of general circulation in said county for four consecutive weeks, of the object and prayer of such petition, that remonstrances may be made thereto; and it shall be the duty of said commissioners, at their next meeting after the presentation of such petition, notice being given as aforesaid, to hear and determine the same, and if it shall appear that it will be for the interest of the community using such road, street, alley or bridge, to have the same taken and used for the purpose of constructing such turnpike or plank road thereon, the said commissioners shall grant a permit, in writing, to said plank road company to take and use said road, street, alley or bridge, on such terms as they may deem for the interest of the community; and said company shall

Manner of occupying roads streets, alleys &c., by companies.

thereby acquire in such road, street, alley or bridge, an exclusive right of way therein: *provided*, that nothing in this section shall be so construed as to extend to roads, streets, alleys or bridges, within the limits of any incorporated city or village in this State, nor to any Macadamized road.

Tolls on less
than five miles
of road.

§ 5. That when any turnpike or plank road incorporated under the laws of this State, whose termini are less than five miles apart, the directors of such road shall have the power to receive and collect tolls on such road in proportion to the length thereof, as is provided in the thirty-sixth section of the act to which this is supplementary.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Relating to the entry and recording of recognizances in the Court of Common Pleas.

Concerning
recognizances
in the com-
mon pleas.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That whenever any recognizance shall be returned to any court of common pleas by a justice of the peace or other officer authorized to take such recognizance, a memorandum thereof shall be entered in the minute book of the court, whereupon the same shall be considered as of record in such court, and proceeded on by process issuing out of said court in the same manner as if such recognizance had been entered into before such court; and the same recognizance shall be made out and recorded in full in the book of records of said court, in the same manner as recognizances taken in said court.

Time of tak-
ing effect.

§ 2. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN AOT

Authorizing suits upon written instruments to be brought in the name by which the same is executed, and prescribing the mode in which sureties of executors, administrators or guardians, may be made parties to judgments.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all actions upon bills of exchange or promissory notes or other written instruments, whenever any of the parties thereto are designated by the initial letter or letters, or some contraction of the christian or first name or names, it shall be sufficient to designate such person by the same initial letter or letters or contraction of the first name or names, instead of stating the christian or the first name or names in full.

Concerning suits brought on written instruments.

§ 2. That sureties to the bond of an executor, administrator or guardians, may be made parties defendant to the judgments which may be rendered under an act entitled "An act for the more speedy collection of debts from executors, administrators and guardians, in certain cases," passed March 18th, 1851, in the same manner as the sureties of sheriffs.

Sureties of executors, &c., made parties defendant to judgment.

§ 3. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

Time of taking effect.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN AOT

Prescribing the effects of tenders in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That any action brought on any writing obligatory, promise or contract, for the payment of money, if the defendant shall answer and prove that he did tender payment of the money due on such writing obligatory, promise or contract, at the time and place where by such writing obligatory, promise or contract, he was holden to pay the same, or at any time before the commencement of said action thereon, and shall bring into court the money so tendered, the plaintiff shall not have judgment for

Tender on money and other contracts may be made and pleaded.

more than the money so due and tendered without costs, and shall pay the defendant his costs; and in any action brought on any writing obligatory, promise or contract for the payment of any article or thing, other than money, or for the performance of any work or labor, if the defendant shall answer that he did tender payment or performance of such writing obligatory, promise or contract, at such time and place, and in such article or articles, work or labor, as by such writing obligatory, promise or contract, he was bound to pay or perform, and if the court or jury shall find that he did tender as alleged in his pleading, they shall at the same time assess the value of the property or labor so tendered, and thereupon judgment shall be rendered in favor of the plaintiff, for the sum so found, without interest or costs; unless the defendant shall forthwith perform his contract or give to the plaintiff such assurance as the court may approve, that he will perform the same within such time as the court shall direct; in which case judgment shall be rendered for the defendant; and in case any article so tendered be of a perishable nature, it shall from the time of such tender, be kept at the risk and expense of the plaintiff, provided the defendant take reasonable care of the same.

Taking of ef- § 2. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Allowing writs of certiorari from the courts of common pleas to justices of the peace in certain criminal cases.

Writs of
 certiorari to
 justices in cer-
 tain criminal
 cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That writs of certiorari may be allowed, directed to justices of the peace, to cause their proceedings in prosecutions for offences where the defendant is not recognized, or the

decision of the justice is final, to be brought before the court of common pleas, in order that right and justice may be done.

§ 2. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To amend the third section of an act, entitled "an act for the assessment and taxation of all property in this State and for levying taxes thereon according to its true value in money," passed and took effect April 13, A. D., 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the third section of an act entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 13, 1852, be, and it is hereby amended so as to read as follows: Act amended.

That all property described in this section to the extent herein limited shall be exempt from taxation, that is to say,

1st. All public school houses, and houses used exclusively for public worship, the books and furniture therein, and the grounds attached to such building necessary for the proper occupancy, use and enjoyment of the same, and not leased or otherwise used with a view to profit. All colleges, academies, all endowments made for their support, all buildings connected with the same, and all lands connected with institutions of learning, not used with a view to profit. This provision shall not extend to leasehold estates of real property, held under the authority of any college or university of learning of this State. Property exempt from taxation—school houses, colleges and academies,

2d. All lands used exclusively as grave-yards or grounds for burying the dead except such as are held by any person or persons, company or corporation, with a view to profit, or for the purpose of speculation in the sale thereof. grave-yards,

3d. All property, whether real or personal, belonging exclusively to this State, or the United States. government property,

4th. All buildings belonging to counties used for holding courts, for jails, or for county offices, with the ground, not exceeding in any county ten acres, on which such buildings are erected. county public buildings,

grounds and
buildings for
the poor,

5th. All lands, houses, and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

charitable in-
stitutions,

6th. All buildings belonging to institutions of purely public charity, together with the land actually occupied by such institutions, not leased, or otherwise used, with a view to profit, and all moneys and credits appropriated solely to sustaining and belonging exclusively to such institutions.

fire apparatus

7th. All fire-engines and other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and for the meeting of fire companies, whether belonging to any town, or to any fire company organized therein.

market-hou-
ses,
public
squares,

8th. All market-houses, public squares or other public grounds, town or township houses or halls, used exclusively for public purposes, and all works, machinery and fixtures belonging to any town, and used exclusively for conveying water to such town.

personal prop-
erty under fif-
ty dollars.

9th. Each individual in this State may hold exempt from taxation personal property of any description of which such individual is the actual owner not exceeding fifty dollars in value; no person shall be required to list a greater portion of any credits than he believes will be received, or can be collected, nor any greater portion of any obligation given to secure the payment of rent, than the amount of rent that shall have accrued on the lease, and shall remain unpaid at the time of such listing; no person shall be required to include in his statement as a part of the personal property, moneys, credits, investment in bonds, stocks, joint stock companies, or otherwise, which he is required to list, any share or portion of the capital stock or property of any company or corporation, which is required to list or return its capital and property for taxation in this State.

Taxation of
banks.

The taxes upon banks, banking companies, and all other joint stock companies or corporations, of whatever kind, levied and collected in pursuance of the provisions of this act, shall be in lieu of any taxes which such bank or banking company, or other joint stock, stock company or corporation was, by former laws, required to pay.

Repealing
clause.

§ 2. That the original section three of the act entitled "an act for the assessment and taxation of all property in this State and for levying taxes thereon according to its true value in money," passed April 13th, 1852, be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Further defining the powers of Trustees of Townships.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the trustees of each and every organized township in this State, shall have power to suppress or prohibit all houses, shops, or stores, known as places of habitual resort for tippling and intemperance, under such rules and ordinances, and by the imposition of such fines and penalties as they may deem proper; provided no fine shall exceed fifty dollars and costs, including the fees of the sheriff or jailor, nor any imprisonment in the county jail be for a longer time than twenty days.

Trustees of townships to prohibit tippling houses.

§ 2. That, for the purposes of carrying into effect the provisions of this act, said trustees, or a majority of them, at any regular or special meeting, may enter in the book of records of their respective townships, an ordinance prescribed as aforesaid; but before the taking effect of such ordinance, the same shall be published for four consecutive weeks in some newspaper published in the county, or having general circulation therein. And said trustees shall furnish the justice of the peace in their respective townships, and the probate judge of the proper county, with a certified copy of such ordinance.

Ordinance to be published.

§ 3. It shall be and is hereby made the duty of the justices of the peace in the several townships of this State where such ordinance exists, to enforce the rules and ordinances prescribed as aforesaid, and upon complaint on oath or affirmation charging any person with a violation of such ordinance to issue their warrants directed to the proper constable, who shall serve the same as in other criminal cases, and the defendant when arrested may have the benefit of trial by jury, which jury shall be summoned in the same manner as juries before justices of the peace in civil cases. The defendants shall also have the benefit of certiorari, error, or appeal to the probate court of the proper county, by giving bond and security in double the amount of fine and costs imposed by such justice, and said court, to which is hereby given appellate jurisdiction in all cases arising under this act, shall proceed to the hearing and trial of such cause in the same manner as if such court had had original jurisdiction. All appeals taken under this act shall be filed in the probate court of the proper county within ten days from the rendition of the judgment of any justice of the peace, and writs of certiorari and error shall be prosecuted within the same time.

Justice to enforce the ordinances.

Proceedings before justices

Appeals to probate court.

Fines.

§ 4. All fines imposed under this act, together with the costs of prosecution, including the fees of the sheriff or jailor, shall be collected by the justice of the peace or the probate judge finally determining the same, and when collected shall be paid into the treasury of the proper township, and the fine shall be appropriated to the use of common schools therein.

Complaining witness to give security for costs.

§ 5. In all prosecutions under this act, the justice of the peace shall require the complaining witness to give security for all costs that may accrue in case the defendant shall be found not guilty.

Cities, &c., not affected—when.

§ 6. The provisions of this act shall not extend to any incorporated city or incorporated village in this State in which there shall be in force any ordinance for the suppression or prohibition of houses, shops, or stores, known as places of habitual resort for tippling and intemperance.

Duties of prosecuting attorneys.

§ 7. It is hereby made the duty of the several prosecuting attorneys to prosecute all cases arising under this act whenever the same shall be taken by appeal or certiorari into the probate court.

§ 8. The justice or probate judge before whom a prosecution under this act is finally determined against the defendant, may commit, and it shall be the duty of the sheriff or jailor to receive and safely keep such defendant in the county jail in accordance with the terms of the commitment, and the fees of the sheriff or jailor shall be paid out of the treasury of the proper township on the order of the township trustees.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

Giving Justices of the Peace concurrent jurisdiction with Coroners, in certain cases.

Justices to hold inquests in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That whenever it shall be necessary to hold an inquest on the dead body of any person supposed to have come to his

or her death by violence, and the coroner living at a distance of ten miles therefrom, or being absent from the county, or being unable to perform the duties requisite by law, or when the office of coroner shall become vacant by death, resignation, expiration of the term of office, or otherwise, it shall be lawful to give notice to the most convenient justice of the peace living within said county, who shall proceed in all respects as the coroner would have had to proceed in similar cases, under the law regulating the duties of coroner, and every such justice shall be entitled to the same fees as are or may be allowed by law to coroners in such cases.

§ 2. That section 109 of an act defining the powers and duties of justices of the peace and constables in civil cases, passed March 14th, 1831, be and the same is hereby repealed. Repealing clause.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

To amend the act entitled "An act to enable the Trustees of Colleges, Academies, Universities, and other Institutions for the purpose of promoting education, to become bodies corporate."

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the second and third sections of the act entitled "An act to enable the trustees of colleges, Academies, Universities, and other institutions for the purpose of promoting education, to become bodies corporate," be amended so as to read as follows: Section amended.

§ 2. To ascertain the property and value thereof of any institution desirous of becoming a body corporate under the provisions of this act, it shall be the duty of the auditor of any county of this State, on application in writing of any number of persons of whom not less than five shall be resident freeholders of the county where such application is made, and where such institution is, or is intended to be located, setting forth the objects for which they desire to become incorporated, to select three judicious disinterested How property of Institutions desirous of becoming incorporated, ascertained.

Auditor to appoint appraisers. freeholders of the county and voters therein as appraisers, who shall first take an oath for the faithful discharge of their duties before some competent officer, and such appraisers shall then proceed to make a schedule, and upon actual view to appraise the true value in money of all such goods, chattels, lands and tenements, choses in action, rights, credits and subscriptions as such applicants shall exhibit to such appraisers, and shall return such schedule with their appraisal, and a certificate of some officer authorized to administer oaths, that such appraisers were first duly sworn by him to discharge their duties as such appraisers, to the auditor of the proper county, and if the amount so found shall be equal to the sum required for the commencement of any such institution as said applicants desire, such auditor shall give such applicants a certificate of the fact, and they shall enter it in a book of records by them provided for that purpose, which, together with their corporate name and the articles of association, they shall also cause to be recorded in the recorder's office of the county where such institution is, or is intended to be located, and they shall thenceforward be a body corporate and politic, according to the provisions of this act, and such auditor, appraisers and recorder shall be entitled to the same fees as for like services in other cases, and no more.

Appraisers to be sworn and to make a return.

Trustees to be elected. § 3. The corporators of any college or university, which may be organized in accordance with the provisions of this act or the act to which this section is an amendment, may elect five or more trustees, of whom not less than five shall be resident freeholders of the county where such college or university is located, who shall constitute a board of directors for such institution, and they shall have power to fill vacancies that may occur in their board, and shall hold their offices until their successors are elected and qualified according to the rules and by-laws that may be adopted by the board of trustees; but at all times at least five of such board of trustees shall be resident freeholders of the county where such institution is located; and when any such board, in their corporate name, shall have acquired for the benefit of such institution, five thousand dollars in real and personal property, to be ascertained as hereinbefore provided, said trustees shall have power to appoint a president, professors, tutors and teachers, and any other necessary agents and officers, and fix the compensation of each, and may enact such by-laws, not inconsistent with the laws of this State, or of the United States, for the government of the institution, and for conducting the affairs of the corporation, as they may deem necessary; and shall have power to confer on the recommendation of the faculty, all such degrees and honors as are conferred by colleges and universities of the United States, and such others, having reference to the course of study, and the accomplishments of the student, as they may deem proper.

Their powers and duties.

When they may appoint officers and agents.

§ 4. That the second and third sections of said act be and the same are hereby repealed. Repealing clause.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To authorize the relinquishment of Turnpike, Macadamized or Plank Roads, to counties through which they may pass.

§ 1 *Be it enacted by the General Assembly of the State of Ohio,* That the board of commissioners of any county through which, or a part of which, any Turnpike, Macadamized or Plank Road may have been laid out or constructed, shall be authorized to receive on such terms as the said board may determine, from any company owning such road, a relinquishment to such county of the whole or any part of such road lying in such county, and any road, so relinquished and received, shall be thereafter considered and treated as a public highway; Provided that the board of commissioners shall not be authorized to receive a relinquishment of such road from any company that may be indebted on account of its construction or for materials furnished or repairs made, where such relinquishment will render the stock of such road less valuable, or will be injurious to the interests of any creditor of such company; and in no case shall said commissioners make any compensation for any road by them received as aforesaid; Provided the provisions of this act shall not extend or be applicable to any turnpike company in which this State has any interest. Commissioners to receive relinquishment of roads.

§ 2. That the board of commissioners shall cause a plat and survey of any road received according to the first section of this act, together with the terms of relinquishment of such road, to be recorded by the county auditor in his record of roads and highways, and thereafter the several trustees of Terms of relinquishment, and plat recorded in Auditor's office.

townships and supervisors of roads and highways shall treat said road in the same manner as if said road had been originally laid out as a county road.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To regulate the election, contest of election, and the resignation of Justices of the Peace.

Justices for
new town-
ships.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That whenever any new township shall be set off, the court of common pleas of the proper county shall determine on a suitable number of justices of the peace for such township, and the day of election, and the clerk of the court shall transmit a copy of the proceedings thereof to the trustees of the same, who shall immediately give notice to the electors in the manner pointed out in the second section of this act, to elect said justice so determined on; and should there be no trustees of said township, said clerk shall give notice of such election by causing advertisements to be set up in three public places in said township not less than ten nor more than fifteen days previous to the election, designating the time and place of holding such election.

Vacancies—
how filled.

§ 2. That whenever a vacancy is about to happen, or shall actually happen, in the office of justice of the peace, in any township in this State, either by death, removal, absence at any one time for the space of six months, resignation, or otherwise, the trustees having notice thereof, shall give notice to the electors of such township to fill such vacancy, by setting up advertisements in three public places in such township, specifying the number of justices to be elected, which notice shall be given not less than fifteen nor more than twenty days previous to holding such election, which shall be held at such place as said trustees (or clerk, as the case may be,) shall direct.

Probate judge
to add one or
more justices
in townships.

§ 3. That whenever it shall be made to appear to the satisfaction of the probate judge of the proper county, that there is not a sufficient number of justices of the peace in any township thereof, and, also, that public notice had been given in such township, that application would be made for an additional

number of justices of the peace, the said court is hereby authorized to add one or more justices to such township (as may seem just and proper) and the trustees shall give notice to the electors of such township to elect such justice or justices so added, agreeably to the provisions of said second section of this act; and whenever it shall be made to appear to the court aforesaid, that it is expedient to decrease the number of justices in any township, said court shall be authorized to restrict the number as it may judge proper; provided that no justice shall be deprived of his commission until the expiration of the term for which he shall have been elected, and provided also, that if a part of any township shall be attached to any other township, the justices of the peace residing in the limits of that part of the township so attached as aforesaid shall execute the duties of their respective offices in the township to which the same shall be attached, in the same manner as if they had been elected for such township.

May decrease
the number of
justices.

Proviso.

§ 4. That if any candidate or elector of the township in which the election was held, shall think proper to contest the election of the person or persons proclaimed elected, such candidate or elector shall make it known to the probate judge of such county, within ten days after the day of such election, and the points on which the contestor means to contest such election, and it shall be the duty of such judge to communicate the same to the person or persons whose election is contested, specifying the name of the contestor with the points on which he relies, citing him or them, to appear on a day not more than fifteen days from the day of such election, at his office in such county, allowing such person or persons five days notice of such contest, and said judge shall also direct the clerk of the court of common pleas, to withhold the return of such contested election until the same is decided.

Manner of
contesting
elections.

§ 5. That said judge on the same day that he issues a notice to the person or persons whose election is contested, shall appoint three respectable freeholders of his county not resident in the township in which such election was held, to try such contest, and shall issue a summons to said freeholders directing them to appear and try said contest on a day specified in said summons, which summons shall be directed to the sheriff, or any constable of such county, and shall be served by the officer to whom directed at least three days before the time appointed for the trial of such contest, and shall be by said sheriff or constable (as the case may be) returned at the time and place of trying the same.

Jury appointed
to try the
contest.

§ 6. That the said judge is hereby authorized, on the request of the contestor, or the person or persons whose election is contested, to grant subpoena for witnesses directed to the sheriff or any constable of his county, who shall serve and return the same to said judge at the time and place therein named.

Witnesses
may be examined.

Jury sworn to
decide accord-
ing to evi-
dence.

§ 7. That said freeholders shall be sworn or affirmed to try such contest agreeably to evidence, and no evidence shall be admitted, but such as relates to the points stated in the notice, and when the trial is closed the freeholders shall sign and seal their decision, which shall be attested by the said judge; and if by such decision there be a vacancy in the office of justice of the peace, the said judge shall, within three days thereafter, transmit a copy of such decision to the trustees of said township, or the clerk of such township if there be no trustees, who shall forthwith give notice to the electors to fill such vacancy as in other cases; but if by the decision the said election remains good, he shall transmit the same to the clerk of the court of common pleas who shall immediately thereafter proceed as if no contest had taken place.

Grounds of
contest.

§ 8. That no election of a justice of the peace shall be set aside by the freeholders merely because illegal votes have been given at such election, if it appear that the person or persons whose election shall be contested has the greatest number of the legal votes given at such election after deducting all illegal votes given when there shall be no evidence for whom such illegal votes were given, as well as all illegal votes which shall appear to have been given for the person or persons whose election shall be contested.

Concerning
jury, witness-
es, &c.

§ 9. That in case any of the freeholders, summoned fail to attend at the time and place of trial, the judge shall appoint other freeholders to supply the deficiency and the witnesses shall be sworn or affirmed: provided, if the said judge fail to attend said trial, any disinterested justice of the peace of the county may perform all the duties required of said judge by the provisions of this act.

Costs—how
paid.

§ 10. That if the contestor fail in setting aside the election, he shall pay the cost, and the said judge or justice (as the case may be) shall render judgment, from which there shall be no appeal, and issue execution for the same, to the sheriff, or any constable of the county; but if the election is set aside, the township in which such election was held shall pay the costs. The said judge or justice (as the case may be) shall make out and certify a bill of such costs, and forward the same to the trustees of such township, who shall upon the receipt of said bill of costs, issue their orders on the township treasurer for the payment of the same. The said judge or justice (as the case may be) shall receive one dollar per day, and such freeholders, one dollar per day; and the witnesses and sheriff or constable their lawful fees as in other cases.

Officers fees.

Justices to be
qualified.

§ 11. That whenever any person is elected to the office of justice of the peace and receives a commission from the Governor, he shall forthwith take the necessary oath or affirmation, appertaining to such office before the clerk of the court of common pleas of his proper county (who is hereby authorized

to administer the same) or before any justice of the peace of the proper county, who shall within ten days certify the same to the clerk aforesaid, who shall in either case make record of it, in a book provided for that purpose, and every justice of the peace so qualified before he shall be deemed legally authorized to discharge any of the duties of his office, shall within ten days after the taking of said oath or affirmation, enter into bond to be approved by the trustees of the township, payable to the State of Ohio, with at least two sufficient securities with a penalty of not less than one thousand dollars, nor more than five thousand dollars at the discretion of the trustees to be deposited with the township treasurer, unless the township treasurer should be the justice elect, then with the township clerk, conditioned that the said justice, shall well and truly pay over, according to law, all moneys which may come into his hands by virtue of his said commission, and also conditioned, that he will well and truly do and perform every ministerial act that is enjoined upon him by law, on which bond suit may be brought, and the penalty thereof recovered by any person injured by the neglect or refusal of any such justice, in the same manner as on bonds given by sheriffs; and on refusal or neglect to enter into such bond, the trustees shall give notice of a new election to fill the office of such justice.

Justices to enter into bond.

§ 12. Whenever in the opinion of the trustees of any township the security required to be given by any justice of the peace, under this act, shall be or shall become insufficient for any cause, such trustees shall give notice to such justice in writing that he is required within ten days to give additional security to the satisfaction of such trustees; and on neglect or refusal of any justice to enter into any bond with security, as required of them by this act, the office shall be deemed vacant, and the trustees shall give notice of a new election to fill such office.

Additional security may be required.

§ 13. That every justice of the peace hereafter commissioned shall in thirty days thereafter transmit the date thereof to the clerk of the township, who shall make an entry thereof in a book by him to be provided for that purpose, and at least sixty days previous to the expiration of such commission, the clerk shall give a written notice to the trustees when such justice's commission will expire, and the trustees on receiving such notice shall notify the electors of such township to meet and elect a justice of the peace, to fill such vacancy, in the manner pointed out in the second section of this act, and said trustees may hold an election before the said vacancy actually happens.

Date of commissions recorded by township clerks.

§ 14. That all elections under the provisions of this act, shall be conducted in the same manner as is required in the election of members of the General Assembly, and the judge

Manner of conducting elections for justices.

of election, taking in the return of such election, shall be entitled to receive ten cents per mile from the place of holding the election to the seat of justice, to be paid out of the county treasury.

Manner of resigning.

§ 15. That all resignations of justices of the peace shall be made to the clerk of the court of common pleas of the proper county, and the justice so resigning shall at the same time give notice to the clerk of the township of his resignation, and the township clerk shall within three days after such notice to him, certify the same to the trustees of the township, who shall proceed thereon as in other cases of vacancies.

Notice given to electors.

§ 16. That should there be no trustees in any such township, the township clerk shall give the notice to electors required to be given by this act.

Fines & penalties.

§ 17. That if any officer or other person shall neglect or refuse to discharge or perform any of the duties enjoined or required by the provisions of this act, such officer, person or persons so offending shall be fined in a sum not less than five nor more than fifty dollars, to be recovered before any justice of the peace of the proper township in an action of debt for the use of common schools, in the township, which action may be commenced and prosecuted by the treasurer of the township, on complaint of any citizen thereof.

Repealing clause.

§ 18. That the "act providing for the election and resignation of justices of the peace," passed January 31st, 1831, the act entitled "an act to amend the act to provide for the election and resignation of justices of the peace," passed March 21, 1840, and an act to amend "an act to provide for the election and resignation of justices of the peace," passed February 28, 1842, be and the same are hereby repealed: provided that said repeal shall not in any way or manner affect any right which may have accrued under any of said acts.

§ 19. This act shall take effect and be in force from and after the first day of March, one thousand eight hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Authorizing Railroad Companies to issue bonds and increase their capital stock in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That any railroad company heretofore or that may hereafter be incorporated under the laws of this State, contemplating the laying of a double track, may issue its bonds convertible or otherwise, bearing any rate of interest not exceeding seven per centum per annum, to an amount not exceeding half of its capital stock, and sell the same at such times and at such places within or without this State, and at such rates as the directors of such company may deem best for its interests; and if such bonds are sold at a discount, they shall be as valid in every respect as if sold at their par value, and such company may secure such bonds by a mortgage on its property or otherwise, and may at its option increase its capital stock in an amount equal to the bonds issued as aforesaid.

Railroad companies may issue bonds.

May increase their capital stock.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Supplementary to "An act for the maintenance and support of illegitimate children," passed February 2, 1824.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That when any defendant to a complaint of bastardy, shall have been committed to jail, on neglect or refusal to find the security required by the third section of the act to which this is supplementary; or on failure of such defendant to renew his recognizance as required by the fourth section of said act, it shall be lawful for any judge of the supreme court, judge of the common pleas within his district, or probate judge within

When defendant admitted to bail in bastardy cases.

his county, to admit such defendant to bail, by recognizing him in such sum, and with such securities as such judge shall deem proper, conditioned for the appearance of such defendant before the proper court, to answer the complaint under which he stands charged; and for taking such bail, the said judge may, by his special warrant, under his hand and seal, require the sheriff or jailor to bring such defendant before him, at the court house of the proper county, at such time as in such warrant the judge may direct; Provided, that in fixing the amount of bail, the judge admitting the same, shall be governed in the amount and quality of bail required by the third section of the act to which this is supplementary.

Proviso, as to bail.

Repealing clause.

§ 2. That the act passed March eighth, eighteen hundred and forty-five, entitled "An act in addition to the act entitled 'An act for the maintenance and support of illegitimate children,'" passed February second, eighteen hundred and twenty-four, be, and the same is hereby repealed.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

For the better management of Orphan Asylums.

Officers of Orphan Asylums appointed by probate judge.

Term of office,

and powers.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in any county in this State in which orphan asylums have been or may be established by law, whenever it may become necessary to appoint trustees, directors or other corporators of any such asylums, it shall be the duty of the probate judge of the said county, upon the petition of the prosecuting attorney of such county, or any other person, to appoint such trustees, directors or corporators, who shall hold their office for the term of three years. And the trustees, directors or corporators, so appointed, shall have the management and control of the said asylum, in the same manner and to the same extent as the trustees of such asylums now or may have, under existing laws.

§ 2. That in all cities of the first or second class, in which orphan asylums have been or may be established by law or as private institutions, the directors of the city infirmary or other persons having charge of the poor in such cities, may make such arrangements with the trustees or the person having charge of the said asylums, for the support and education of all orphan or other children coming under their control by virtue of the laws in force at the time, as they may deem proper, and shall allow such compensation as may be reasonable and just, to be paid out of the poor fund of such city.

Concerning
Orphan Asyl-
ums in cities
of the first
and second
class.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To provide for the purchase of stationery, fuel and other articles for the General Assembly and State Officers.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That annually hereafter, on or before the first Monday of August, it shall be the duty of the Secretary of State to ascertain and fix the amount and kinds of all paper necessary for the printing of both branches for the General Assembly, and the offices of the Governor, Secretary, Auditor, and Treasurer of State, and all other public printing, for the period of one year. And that, at the same time, said Secretary of State shall ascertain the amount and kinds of fuel necessary and proper for the use of both branches of the General Assembly, and all the State offices at the seat of government, for the like period of one year.

Secretary of
State to fix
the amount of
fuel and
printing pa-
per.

§ 2. That whenever the amount and kinds of paper and fuel shall be ascertained and fixed as aforesaid, it shall be the duty of the Secretary of State to give at least thirty days notice in three newspapers printed in, and of general circulation in this State, setting forth that sealed proposals will be received at the office of the Secretary of State until the first Monday of September following, for furnishing such paper and fuel.

When so fixed
to give notice
for proposals.

Proposals to
be separate
and contain
sample.

§ 3. That said proposals shall be separate and distinct; the proposals for paper to contain samples of the paper to be furnished, and the price of each kind; and the proposals for fuel to specify the kind, quality and price of the fuel proposed to be furnished, which proposals shall, on said first Monday of September, be opened by said Secretary of State, and the contracts be by him awarded to the lowest bidder or bidders; Provided, that if in the opinion of said Secretary of State, it will be advantageous to divide said contracts, or either of them, and let a portion of the contract, or either of them, to one or more bidders, and the remaining portion of such contracts or contracts to another bidder or bidders, he shall be permitted so to do.

The letting.

Contractors to
give bond.

§ 4. That to secure the faithful performance of each and every contract so made for paper or fuel, the said Secretary of State shall take from the contractor or contractors, a bond or bonds, payable to the State of Ohio, with good and sufficient security, to be approved by the said Secretary of State, in a penalty not less than double the amount to be paid such contractor or contractors by virtue of their contracts.

On failure to
give bond,
contract
awarded to
another.

§ 5. That if the person or persons to whom any contract may be awarded as aforesaid, shall fail to give bond within ten days from the time of awarding said contracts, then, in that case, it shall be the duty of said Secretary of State to award such contract or contracts to the next lowest bidder or bidders, and immediately take from him or them, as the case may be, a bond or bonds in the manner and for the purpose aforesaid.

Bond filed in
Secretary's
office.

§ 6. That such bond shall be filed and retained in the office of the Secretary of State, and for any failure to comply with any of the conditions therein contained, may be prosecuted in the name of the State in any court of competent jurisdiction, and the amount of damages, when collected, shall be paid into the State Treasury; and every person or persons to whom contracts shall have been awarded and who shall neglect or refuse to enter into the bonds required by this act, shall forfeit and pay for every such neglect or refusal, any sum not less than fifty nor more than five hundred dollars, to be recovered in the name and for the use of the State.

Suits thereon.

Secretary to
purchase sta-
tionery for the
State.

§ 7. That annually hereafter, on or before the first day of November, the Secretary of State shall purchase and cause to be delivered at his office, so much and such kinds of stationery and other articles as may be necessary for the use of the General Assembly, the offices of the Governor, Secretary of State, Auditor of State, Treasurer of State, Attorney General, State Librarian, Supreme Court, and others entitled to the same; and no person other than the Secretary of State shall purchase any article for the use of the General Assembly, or either branch thereof, unless directed so to do by joint resolution, or resolution of the House ordering the same; the amount that may

be necessary for the purchase of such stationery and other articles to be drawn upon the order of the Secretary of State, and the same shall be allowed by the Auditor of State, and paid on his warrant by the Treasurer of State.

§ 8. The Secretary of State shall, when he delivers to the officers of either branch of the General Assembly any stationery or other articles, take from the officer to whom delivered, a receipt stating the amount and value of the articles so delivered.

When Secretary to take receipts for stationery.

§ 9. That the act entitled, "An act authorizing the Secretary, Auditor and Treasurer of State to contract for certain articles therein named," passed February 21st, 1824, be and the same is hereby repealed.

Repealing clause.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To authorize railroad companies so to construct their bridges as to answer the purposes of ordinary travel, and to receive toll for crossing such bridges.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That any railroad company of this State, may so construct its bridges as to answer the ordinary purposes of travel, and business, as well as for railroad purposes; and any company that shall so construct its bridges, is hereby authorized to demand and receive such rates of toll for the passing of individuals, vehicles of all kinds, or animals, as said company may demand, subject to the approval of the county commissioners of the county or counties in which any such bridge is erected: Provided, that such rates of toll shall be uniform, shall be printed or painted, and kept conspicuously posted in or near the toll-house of such bridge; and provided further, that such rates of toll may be revised and changed the first week in each year, and that said company may compound and bargain with any person or party, for the use of such bridge or bridges, by the month, quarter, or year: Provided, also, that no railroad company shall receive toll upon any such bridge, if erected within one mile of any toll bridge previously constructed over the same stream by any incorporated bridge company.

Concerning railroad bridges.

Company may receive toll.

Proviso.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To amend the act entitled "an act to regulate the election of State and county officers," passed May 3d, 1852.

Concerning
officers of elec-
tions.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That section six of an act entitled "an act to regulate the election of State and county officers," passed May 3, A. D. 1852, be and the same is hereby so amended as to read as follows: Section six. That at all elections to be holden under this act, the trustees of the several townships shall serve as judges, and the clerk of the township and such other person as the judges shall choose, shall serve as clerks of the election, who, together with the judges aforesaid, shall receive two dollars each, as a compensation for their services, at every annual or other election held under the provisions of this act, to be paid out of the treasury of the proper county.

Their com-
pensation.

§ 2. That the original section six of said act be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Supplementary to the act entitled "an act to provide for compensation to owners of private property appropriated to the use of corporations," passed April 30, 1852.

When tran-
script to be
certified to
probate court.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all cases now pending in the courts of common pleas, or district court of this State, in which any railroad company, or other corporation has commenced proceedings, under any law of this State, in force prior to the thirtieth day of April, eighteen hundred and fifty-two, to appropriate private property to the use of such company or corporation; and

where, by reason of any irregularity in the proceedings of the appraisers or arbitrators, or for any other good cause shown, such court shall set aside the award of the arbitrators or appraisers, or shall, for want of jurisdiction, or other cause, dismiss any such case, a transcript of the records and proceedings of either of said courts in such cause, shall forthwith be certified by the clerk of such court, to the probate judge of the proper county.

§ 2. Upon the filing of such transcript in the probate court, such cause shall be proceeded with in all respects according to the provisions of the act entitled "an act to provide for compensation to owners of private property appropriated to the use of corporations," passed April 30, 1852, and as though the statement required by the second section of said act had been filed with the probate judge.

How probate judge to proceed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

To amend an act entitled "an act to create a lien in favor of mechanics and others in certain cases," passed March 11th, 1843.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the seventh section of the act entitled "an act to create a lien in favor of mechanics and others in certain cases, passed March 11, 1843, be amended so as to read as follows: § 7. That any person entitled to a lien under this act, shall make an account in writing of the item of labor, skill, material and machinery furnished, or either of them, as the case may be, and after making oath thereto within four months from the time of performing such labor and skill, or furnishing such material and machinery, shall file the same in the recorder's office of the county in which such labor, skill and materials shall have been furnished, which account so made and filed, shall be recorded in a separate book to be provided by the recorder for that purpose, and shall from the commencement of such labor or the furnishing such materials and for two years after the completion of such labor or the furnishing of

Account of labor to be made and filed in recorder's office.

Lien.

such materials, operate as a lien on the several description of structures and buildings, and the lots on which they stand, in the first section of this act named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof, shall be filed with the account herein required.

**Repealing
clause.**

Previous.

§ 2. That the seventh section of an act entitled "an act to create a lien in favor of mechanics and others in certain cases," passed March 11th, 1843, be and the same is hereby repealed; Provided, that all rights acquired and liabilities incurred under said section, shall not be affected by the repeal thereof.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To provide for struck juries in the district courts and courts of common pleas in Ohio.

**Precipe filed
with the clerk
for struck jury**

**Manner of
striking the
jury.**

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That whenever a struck jury shall be deemed necessary for the trial of any cause in the district court or court of common pleas, it shall be lawful for either party to file with the clerk a precipe for such jury, when it shall be the duty of such clerk to give four days' notice to both parties, of the time of striking the same; at the time designated said clerk shall attend at his office, and in presence of the parties, or such of them as shall attend for that purpose, shall select from the number of persons qualified to serve as jurors within the county, forty such persons as he shall think most indifferent between the parties, and best qualified to try such cause; and then the party requiring such jury, his agent or attorney, shall first strike off one of the names, and the opposite party, his agent or attorney, another; and so on alternately until each shall have struck out twelve. If either party shall not attend, in person or by attorney, it shall be the duty of the clerk to

strike for the party not attending. When each party shall have stricken out twelve names as aforesaid, the clerk shall make a fair copy of the names of the remaining sixteen persons, and certify the same under his hand to be the list of jurors struck for the trial of such cause, and the said list shall be delivered to the sheriff or other officer, together with the venire facias, and such sheriff or other officer shall thereupon annex the names therein contained to such venire, and summon the persons named according to the command of such writ. And upon the trial of the cause, the jury so struck shall be called as they stand upon the pannel, and the first twelve of them who shall appear, and are not challenged for cause, or set aside by the court, shall be the jury, and shall be sworn to try said issue.

§ 2. That if the clerk of such court shall be interested in the cause, or related to either of the parties, or do not stand indifferent between them, then, in every such case, either one of the judges entitled to hold said court, may, in term time or in vacation, name some judicious and disinterested individual to strike the jury, and to do and perform all things required to be done by such clerk relating to the striking of such jury; but in no case shall it be necessary to strike such jury more than six days previous to the sitting of the court at which the case is to be tried, and three days' service of the venire shall be held sufficient.

When the clerk shall be interested, judge to appoint some other person to strike the jury

§ 3. That the party requiring such struck jury, shall pay the fees for striking the same, and one dollar per day for each juror so attending, and shall not have any allowance therefor in the taxation of costs, unless the court shall be of opinion that the cause required such special jury, in which last case the extraordinary expense shall be taxed in the bill of costs.

Party requiring, to pay costs for striking jury.

§ 4. That a jury struck for the trial of any issue at a particular term of the court, may be continued with the continuance of the cause, and be summoned in as jurors at a subsequent term, provided both parties consent thereto, but not otherwise.

Continuance of jury.

§ 5. That the provisions of this act shall not extend to any indictment for any offence where the party is entitled to challenge peremptorily, or without cause shown, more than two jurors.

This act not to affect certain cases.

§ 6. That sections twenty-one, twenty-two, twenty-three and twenty-four of the act entitled "an act relating to juries," passed February ninth, one thousand eight hundred and thirty-one, be, and the same are hereby repealed.

Repealing clause.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

Supplementary to the act "to provide for the creation and regulation of incorporated companies in the State of Ohio," passed May 1, 1852.

Orphans may be bound to any orphan asylum.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for the trustees of any township, overseers of the poor of any county, or other officers of any city, town or county in this State, now having, or who may hereafter have the power by law, to bind out orphan or destitute children, to bind the same to any orphan asylum incorporated by the laws of the State of Ohio, with the consent of the trustees, directors, or authorized managers thereof.

Parents may bind their children to orphan asylums

§ 2. That it shall be lawful for any father, or in case of the death of the father, of the mother, to bind out his or her children to such orphan asylums, with the like consent of the trustees or directors thereof.

Provisions of the indentures

§ 3. That the indentures of service so executed, shall be signed by the father or mother, or by the trustees of the township, or other officers specified in the first section of this act of the one part, and by the trustees or directors of said orphan asylum, of the other part, and shall provide that such orphan or destitute children shall remain in said asylum, to be supported by the same, and subject to the control thereof, until such time as the said trustees or directors shall find suitable homes or places for the same, when it shall be lawful for, and it is hereby made the duty of the said trustees or directors of said orphan asylum to execute with such persons so desiring to take such orphan or destitute children, such indentures of service or other contracts in reference to said children as they, the said trustees or directors, shall deem most for their benefit and interest.

An act to apply to orphan children.

§ 4. That the provisions of the act of March eighth, one thousand eight hundred and thirty-one, concerning apprentices and servants, except so far as they are changed by the provisions of this act, shall apply to orphan or destitute children so bound as aforesaid, as also to such orphan asylums to whom they may be bound.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To amend the act entitled "an act to preserve the purity of elections," passed March 20, 1841.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That section one of an act entitled "an act to preserve the purity of elections," passed March twentieth, one thousand eight hundred and forty-one, be and the same is hereby amended so as to read as follows:

Act as amended to apply to elections for certain offices.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the provisions of this act shall have reference, and be applied to all elections hereafter to be holden, or vote hereafter to be taken for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, attorney general, judges of the supreme court, judges of the court of common pleas, members of the board of public works, probate judge, clerk of the court of common pleas, sheriff, coroner, county auditor, county commissioner, county treasurer, county recorder, county surveyor, prosecuting attorney, senators and representatives to the general assembly, judges of the criminal or other court of any county, directors of county infirmary, representatives to congress, electors of president and vice president of the United States, all township officers, and upon laws creating new counties, changing county lines, removing county seats, and authorizing associations with banking powers, or any other officer authorized to be elected by any law of this State.

§ 2. That the original section one of said act be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

Establishing Boards of County Commissioners and prescribing their duties.

Board of county commissioners.

Term of office.

how regulated.

Term when elected to fill vacancy.

Relative terms of office. how determined.

Vacancies, how filled.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That there shall be established, in each organized county in this State, a board of county commissioners, to consist of three persons, to be elected by the qualified electors thereof, at the annual election in October, who shall hold their offices for three years, except as hereinafter provided; and are hereby authorized and empowered to do and perform all such duties as now are, or hereafter may be, required of them by law.

§ 2. That the commissioners first elected in any new county in this State, shall hold their office for the term of one, two and three years; to be by them determined by lot at their first session.

§ 3. That whenever it becomes necessary to elect a commissioner to fill any vacancy occasioned by death, resignation or removal, the person elected shall hold his office for the unexpired period for which his predecessor was elected, and until his successor is elected and qualified.

§ 4. That when it shall become necessary, in any county, to elect a county commissioner, for the full term of three years, and at the same time, to elect one or more for a shorter period than the full term of service, in that office, the person having the highest number of votes shall be deemed to have been elected for the longest period, and the person having the next highest number of votes shall be considered to have been elected for the second longest period, and the person having the third largest number of votes shall in like manner be deemed to have been elected to said office for the shortest period; *Provided*, that when two or more candidates for that office shall have the highest and an equal number of votes, it shall be the duty of the clerk and justices of the peace, who shall open and certify the returns, to determine, by lot, who of such candidates shall be deemed elected, and the period for which each shall serve, not exceeding the term of service designated by law.

§ 5. That whenever there shall be a vacancy in the office of county commissioner from death, resignation, removal, or any cause other than the expiration of the term for which he was elected, and the interest of the county shall require such vacancy to be filled before the next annual election, the probate judge, auditor, and county recorder of such county, or a majority of them, shall meet at the seat of justice of the coun-

ty, and appoint one or more commissioners, as the case may require, who shall continue in office until the next annual election, and until the commissioner or commissioners then elected shall be qualified, and no longer; and the absence of any commissioner from the county for six months in succession, shall be deemed a resignation of the office.

§ 6. That before any commissioner shall enter upon the duties of his office, he shall take an oath or affirmation, before some person authorized to administer the same, faithfully and impartially to discharge the duties of a commissioner in the county in which he resides, and deposit a certificate thereof with the county auditor of the proper county, to be by him filed and carefully preserved.

Commissioners to be qualified.

§ 7. That the board of commissioners, in the several counties of this State, shall be capable of suing and being sued, pleading and being impleaded, in any court of judicature within this State; and they are hereby authorized and required to ask, demand and recover, by suit or otherwise, any sum or sums of money or other property, due to such county on account of advances made by them on any contract with any person or persons for the erection or repairs of any public buildings or bridges, or any other contract which, by the provisions of this act, they are authorized to enter into; and in like manner, to sue for, and recover in money, the value or amount of any labor or article of value, subscribed instead of money, to aid in erecting or repairing public buildings or bridges, where such labor or article of value, upon their requisition, shall not have been performed, delivered or paid in a reasonable time; and the money so recovered, in either of the above cases, shall be by them paid into the treasury of the county; and they shall take the treasurer's receipt, and file the same with the auditor of the county.

Their powers and duties.

§ 8. That the board of county commissioners shall hold four sessions annually, at the seat of justice of their respective counties, commencing on the first Mondays of March, June, September and December, at all of which they shall transact any business which now is, or may hereafter be, required of them by law.

To hold four sessions annually.

§ 9. That whenever a majority of the board of county commissioners shall meet agreeably to the provisions of this act, or at any other time when they may be, by law, required to meet for the transaction of business, they shall constitute a quorum for the transaction of business.

Majority considered a quorum.

§ 10. That at the June session, the commissioners shall examine and compare the accounts and vouchers of the county auditor and treasurer, count the funds in the treasury, and direct the auditor to publish an exhibit of the receipts and expenditures for the past year.

Their duties at the June session.

To contract
for building
poor houses,
bridges, &c.

§ 11. That the commissioners, at any of their stated sessions, or at any extra session which they are hereby authorized to hold for the purpose, may make any necessary order or contract in relation to the building, finishing, furnishing or repairing the public buildings, poor houses or bridges, the improvement or enclosure of the public grounds, the maintenance and support of idiots or lunatics, or the expenditure of the three per centum fund, within their counties, and if any bridge or bridges within any county has or have been or shall become destroyed by fire, flood or any other means, the county commissioners may contract for the rebuilding, or appropriate money to the rebuilding of such bridges so destroyed, if they believe the public interest will be subserved thereby. And said commissioners shall levy, in the same manner as other county taxes are levied in addition to the half mill now allowed by law to be assessed for bridge purposes, a tax sufficient to pay the sum of money they may appropriate to the rebuilding of such bridge so destroyed.

Levy a tax
for building
bridges de-
stroyed.

To authorize
the auditor to
contract for
repairs.

§ 12. That the county commissioners be and they are hereby authorized to empower the county Auditors of their respective counties to contract for the making of such repairs or improvements on the public buildings or public grounds of their counties, as may be necessary; Provided the costs of such repairs or improvements shall not exceed fifty dollars.

Their duty in
relation to
debts.

§ 13. That the county commissioners of the respective counties shall have power to compound for, or release, in whole or in part, any debt, judgment, fine or amercement, due to their county and for the use thereof, except in cases where they, or either of them, are personally interested; and whenever said commissioners shall compound for, or release, in whole or in part, any debt, judgment, fine, or amercement, as aforesaid, they shall enter upon their journal a statement of the facts in the case, and the reasons that governed them in making such release, or composition; Provided, however, that it shall be unlawful for the county commissioners of the several counties, hereafter, to compound for, remit or release, either in whole or in part, any penalty, fine, or judgment incurred, assessed or rendered under any law to regulate or restrain the vending or giving away of spirituous liquors or the keeping of taverns.

Proviso.

No commis-
sioner to be a
contractor.

§ 14. That no commissioner shall, directly or indirectly, as contractors, be concerned in any contract for work to be done, or material to be furnished for the county, under the penalty of two hundred dollars, to be recovered by a civil action for the use of the county; and such commissioner shall, moreover forfeit any compensation he was to receive on such contract, any thing in the same to the contrary notwithstanding.

§ 15. That the commissioners, or either of them, are hereby authorized and empowered to administer all oaths or affirmations necessary in discharging the duties of their respective offices.

To administer oaths, &c.

§ 16. That until proper buildings are erected at the place fixed on for the permanent seat of justice in any county, it shall be the duty of the county commissioners to provide some suitable place for holding the courts of such county.

To provide a place for holding court.

§ 17. That in all cases where any bridge, or any State or county road or public building, the property of any county within this State, shall be injured or destroyed by any person or persons, it shall be the duty of the board of county commissioners of the proper county in which such bridge or public building is situate, to sue for and recover of such person or persons such damages as shall have accrued by reason thereof; and the money so recovered shall, when collected by the proper officer, be paid into the treasury of the proper county, and shall be appropriated by the commissioners thereof to the repairing or rebuilding of such bridge or public building.

To bring suits in certain cases.

§ 18. That if any person or persons shall conceive him, her, or themselves aggrieved by the decision of the county commissioners in any case, such person or persons may, within fifteen days thereafter, appeal to the next court of common pleas, notifying the commissioners of such appeal, at least ten days before the time of trial, which notice shall be in writing, and delivered personally to the commissioners, or left with the auditor of the county, and the said court shall, at their next session, hear and determine the same, which decision shall be final.

Appeal had by notifying commissioners.

§ 19. That if any commissioner shall be guilty of any misconduct in office, he shall, on conviction thereof, by indictment before the court of common pleas of the proper county, be immediately removed from office, and fined, at the discretion of said court, in any sum not exceeding four hundred dollars, with costs, which fine shall be paid into the county treasury for the use of the county.

Misconduct in office.

§ 20. That the act entitled "An act establishing boards of county commissioners," passed March 5, 1831, and the amendatory acts thereto, passed February 25, 1833, February 28, 1834, March 14, 1836; also the act entitled "An act authorizing county commissioners to remit fines in certain cases," passed March 13, 1843; also the act entitled "An act to provide for filling vacancies in the board of county commissioners, and prescribing their powers and duties in certain cases," passed April 30, 1852, be and they are hereby repealed; Provided that the acts done, obligations incurred and rights acquired under the provisions of said acts repealed shall remain

Repealing clause.

and be in no wise altered or affected by this act; Provided, further, that nothing in this act shall be so construed as to affect the term of office of any commissioner heretofore elected and qualified.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To provide for the printing of the Ohio Reports.

Proposals for
 printing and
 binding the
 Ohio State
 Reports.

Duty of su-
 preme judges.

Specifications
 of the propo-
 sale.

Time of open-
 ing proposals
 and awarding
 contracts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the secretary of state shall on the first Monday of April, 1853, or sooner, if a majority of the judges of the supreme court shall direct, give notice in two newspapers published in the city of Columbus, that sealed proposals will be received at his office until the third Monday of said month for the printing and binding of two thousand copies of the reports of cases decided in the supreme court of this State at the January term thereof, one thousand eight hundred and fifty-three, to be entitled the Ohio State Reports, which printing and binding shall be in form, style, and execution as the judges of the supreme court shall direct, and it shall be the duty of such judges to direct the secretary of state as to the form, style, and execution thereof, so that the secretary shall specify the same in the notice to be published as aforesaid; said proposals shall specify the price per thousand ems for composition, the price per token (of one hundred and twenty-five sheets) for press work, and the price per copy for binding in good law-sheep; and no extra charge whatever shall be paid to the contractor for folding, pressing, collating, stitching, drying, or such other work, but all such work shall be included in the bid for binding.

§ 2. On the third Monday of April next, the secretary of state, in the presence of the auditor and treasurer of state shall open all such proposals by him received; and the said state officers, or any two of them, on examining said proposals, shall

accept the proposition of the lowest bidder therefor: provided, that the contract for composition and press work may be given to one person or firm, and the contract for binding let to another person or firm, if the bids or proposals warrant such a letting, and in such case the contractor for the binding shall take the printed sheets from the office at which they may be printed without extra charge to the State.

§ 3. The state officers before named shall immediately after the opening and acceptance of any such proposal notify the successful bidder or bidders of such acceptance, who shall, within five days after the receipt of such notification, enter into bond to the State of Ohio with two or more sureties, to be approved by the secretary of state in the sum of three thousand dollars, each, if there be more than one, conditioned for the faithful performance of his contract in compliance with the provisions of this act, which bond or bonds shall be deposited in the office of the treasurer of state, and if said bidder or bidders shall fail to give bond as aforesaid, then said contract or contracts shall be let to the next lowest bidder under the same restrictions.

Notice to successful bidder, who shall give bond.

§ 4. The printing of said reports shall be completed within sixty days from the time of executing such bonds; and the contractor for the binding shall have the work finished, and the volumes delivered at the office of the secretary of state in ninety days from the time of executing his bond, and said contractor for the binding shall furnish all the materials necessary for performing his part of the work without extra charge for said materials, or for delivering the volumes when bound.

Time of completing the work.

§ 5. The furnishing of paper, copy for the printer, and the auditing of the accounts of the printer and binder shall be governed by the provisions of the act "to provide for the State printing," passed April 16th, 1852.

Paper, and copy for the printer—how furnished.

§ 6. That hereafter the printing of the Ohio Reports shall be considered as a separate branch or part of the public printing of the State, and notice shall be given biennially at the same time, and in the same manner, as is required by the first section of the act "to provide for the State printing," passed April 16th, 1852, subject in other respects to the provisions of this act as far as applicable thereto.

In future the Ohio Reports to be a separate branch of the public printing.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

To provide for the publication of an accurate and detailed statement of the receipts and expenditures of the public revenue.

What officers to make account of receipts and disbursements of public money.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That each and every officer or agent of this State, who may be charged or entrusted with the receipts or disbursements of any part of the public money of this State, shall make an accurate and detailed account of all such money by him received or paid out, in which the date and amount of his several receipts or disbursements, the person or persons from whom received, or to whom paid, and upon what account, shall be accurately stated.

Abstract of the account reported annually to the auditor of state.

§ 2. That on or before the fifteenth day of November, in each year, every such officer or agent shall make an abstract of the detailed account required by the first section of this act, which, with proper vouchers corresponding in date, amount, person to whom paid, and on what account, with the several receipts and disbursements entered in said account, and report said abstract and vouchers to the auditor of state.

Auditor of state to arrange the reports under proper heads.

§ 3. That the auditor of state shall annually cause the reports, made in accordance with the foregoing requirements to be transcribed, classified, and arranged under proper heads, so as to present in detail an accurate account of the receipts and the entire expenditures of the public revenue for the preceding year.

State auditor to report to the Governor.

§ 4. That if there shall be a session of the General Assembly held in the year next succeeding the period to which such reports are required to be made, the auditor of state shall report the account of public receipts and expenditures required by the preceding section of this act, to the Governor, who shall communicate the same to the General Assembly, and whenever there shall be no session of the General Assembly to be held in the year next succeeding the period to which such reports are required to be made, the auditor, secretary and treasurer of State, shall cause to be printed in substantial pamphlet form, fifteen thousand copies of the detailed account of the entire receipts and expenditures of the public revenue, and the reports, when so printed, shall be distributed to the several counties under the same rules and regulations, and in the same proportion, as the laws and journals are now or may hereafter be distributed.

When detailed account to be printed and distributed.

Further duty of the auditor of state.

§ 5. That whenever any such officer or agent as aforesaid, shall have reported in compliance with the second section of

this act, the auditor of state shall receipt to such officer or agent for such abstract of account and corresponding vouchers, with a statement therein of the aggregate amount appearing to have been received or disbursed, which receipt the disbursing officer or agent shall file and preserve.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

To provide for the reorganization, supervision and maintenance of Common Schools.

§ 1. *Be it enacted by the General Assembly of the State Ohio,* That hereafter each and every organized township in the State shall compose but one school district for all purposes connected with the general interests of education in the township, and shall be confined to the management and control of a board of education, and the several school districts and fractional parts thereof, which now are, or may hereafter be established in the several organized townships of the State, shall be regarded as sub-districts, and be confided to the management and control of local directors, as hereinafter provided; but nothing contained in this act shall be so construed as to give to the township board of education, or to local directors in sub-districts, jurisdiction over any territory in the township included within the limits of any city or incorporated village with the territory annexed thereto for school purposes, which shall elect or appoint a board of education as hereinafter provided, or which now is or may hereafter be governed as to schools, by any special or other act, specified in the sixty-seventh section of this act.

Townships
compose dis-
tricts; school
districts are
sub-districts.

ELECTION OF LOCAL DIRECTORS.

§ 2. On the second Monday of April, in the year eighteen hundred and fifty-three, there shall be held at the usual hour and place of holding district meetings in each of the sub-dis-

When, where
and how di-
rectors elect-
ed.

- tricts of the several townships of the State, a school meeting of the qualified voters resident within the sub-district, and having the qualifications of voters at the State and county elections, who, when assembled, shall organize by the appointment of a chairman and secretary, and proceed to elect by ballot, three school directors for such sub-district; of those so elected, the person receiving the highest number of votes shall hold his office for three years; the person receiving the next highest number, shall hold the office for two years; and the person receiving the next highest number, shall hold the office for one year; and each shall continue in office until his successor is elected and qualified. In case two or more persons so elected have received an equal number of votes, the duration of their respective terms of office shall be determined by lot in the presence of the chairman and secretary of the meeting; and annually thereafter in the same manner on the second Monday in April, there shall be elected in each sub-district of the proper township, one school director for the term of three years; and the minutes of the proceedings of any such sub-district meeting shall be signed by the chairman and secretary, and delivered to the directors who shall have been elected as aforesaid, to be recorded by the clerk in the records of the sub-district, and the said clerk of the sub-district shall forthwith certify to the township clerk, the names of the local directors so elected, specifying the term for which each was elected; if the directors of any sub-district so elected shall deem it expedient, they may designate the specific hour of the day on which the annual election for such sub-district shall be held, and in such case, shall cause five days notice thereof in writing to be posted up in three of the most public places in such sub-district.
- Term of office.**
- Minutes of the meeting.**
- Official oath.**
- Vacancy, how filled.**
- Special meeting to elect directors.**
- § 3. The said directors, within five days after their election, shall take an oath or affirmation to support the constitution of the United States and of the State of Ohio, and faithfully and impartially to discharge the duties of their office; which said oath the directors are authorized to administer to each other. And in case a vacancy shall occur in the office of director, by death, resignation, refusal to serve, or otherwise, it shall be the duty of the township clerk to fill such vacancy within ten days after being informed thereof, by appointment for the unexpired term.
- § 4. If the qualified voters of any sub-district shall fail to meet and elect school directors, as prescribed in the second section of this act, it shall be lawful for any three qualified voters of such sub-district to call a special meeting of the voters of such sub-district, for the purpose of electing directors, on first giving five days notice in writing of the time and place of holding such meeting, by posting the same in three of the most public places in such sub-district; and the directors so

elected at such special meeting, shall hold their offices for the same terms of time as if elected on the second Monday of April, as prescribed in said second section, except that their said terms of office shall be considered as having commenced on the second Monday of April next preceding the time of holding such special meeting.

§ 5. It shall be the duty of the directors, any two of whom shall constitute a quorum, to meet as soon as practicable after having been elected and qualified, at such place as may be most convenient in the sub-district, and organize by appointing one of their number clerk of the sub-district, who shall preside at the official meetings of the directors, and record their proceedings in a book to be provided for the purpose, together with the minutes of the proceedings of the annual school meetings held in the sub-district by the qualified voters thereof, which shall be a public record; and all such proceedings, when so recorded, shall be signed by the clerk of the proper sub-district. The directors may meet as frequently as they may think necessary for the transaction of business, and fill any vacancy in the office of clerk which may occur in the sub-district, or, in case of his absence, either of the other directors may officiate temporarily in his place.

How directors
to organize,
and their
meetings.

DUTIES OF LOCAL DIRECTORS.

§ 6. It shall be the duty of the school directors in each sub-district to take the management and control of its local interests and affairs, to employ teachers, to certify the amount due them for services to the township clerk, who shall draw an order on the township treasurer for the amount; and to dismiss any teacher, at any time, for such reasons as they may deem sufficient; and to visit the school or schools of the sub-district at least twice during each term by one or more of their number, with such other person or persons competent to examine pupils in their studies, as they may choose to invite.

Their duties.

§ 7. It shall be the duty of the directors, in their respective sub-districts, to negotiate and make, under such rules and regulations as the township board of education may prescribe, all necessary contracts in relation to providing fuel for schools, repairing, building or furnishing school houses, purchasing or leasing school house sites, renting school rooms, and making all other provisions necessary for the convenience and prosperity of schools within their sub-district; but no contracts shall be made by the directors, under the provisions of this section, for the payment of money from the township school fund applicable to such purposes, which in any one year shall exceed the amount distributable to the sub-district in proportion to the enumeration of scholars resident therein, without first obtaining the consent or order of a majority of the township board

Same subject.

When consent
of board to be
obtained.

of education; and all contracts made by the local directors under the provisions of this section, shall be reported to the said board at their next meeting after the making of such contracts, and said township board of education, in their corporate capacity, on the part of the sub-district, shall be held responsible for the performance thereof.

Enumeration
of youth.

§ 8. It shall be the duty of the directors in each sub-district to take, or cause to be taken, annually, between the first and third Monday of October, an enumeration of all the unmarried white and colored youth, noting them separately, between the ages of five and twenty-one years, resident within such sub-district and not temporarily there, designating between male and female, and return a certified copy thereof to the township clerk; and in case the directors in any sub-districts shall fail to take and return the enumeration aforesaid, it shall be the duty of the township clerk to employ a competent person to take the same and allow him a reasonable compensation for his services, and shall proceed to recover the amount so paid for such services in a civil action, before any court having jurisdiction, in the name of the State of Ohio, against said directors in their individual capacity; and in such suits, said clerk shall be a competent witness; and the money so collected shall be applied to the use of common schools in the proper township. The township clerk shall make an abstract of the enumeration so returned to him, designating the number of youth in each sub-district, and transmit such abstract, duly certified, to the county auditor, within twenty days after the return made to him by the directors, or the person appointed to take such enumeration.

Abstract to be
transmitted to
auditor.

Different sur-
veys to be no-
ted separate-
ly.

§ 9. If any civil township or part of a township composing a sub-district, shall be partly situated in the Virginia Military District, the United States Military District, the Western Reserve, or in an original surveyed township, or fractional township to which belongs any of section sixteen or other lands in lieu thereof, or any other lands for the use of schools, or any interest in the proceeds of such school lands, the local directors shall, in taking the enumeration of youth resident within their jurisdiction, return separately those residing in the Virginia Military District, or United States Military District, or Western Reserve, or original surveyed township or fractional township to which belong any school lands or interest in the proceeds of school lands.

TOWNSHIP BOARDS OF EDUCATION.

Of whom
composed.

§ 10. That the township board of education shall consist of the township clerk and of the local director from each sub-district of the township, who has been appointed clerk in his sub-district, a majority of whom shall constitute a quorum for

the transaction of business; and the clerk of the township shall be clerk of the board, but shall not be entitled to a vote. It shall be the duty of said clerk to be present at the meetings of the board, and to record in a book to be provided for the purpose, all their official proceedings, which shall be a public record open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairman and clerk.

§ 11. The said township board of education in each township of the State, and their successors in office, shall be a body politic and corporate in law, and as such may contract and be contracted with, sue and be sued, plead and be impleaded, in any court of law or equity in this State, and may receive any gift, grant, donation or devise, made for the use of any school or schools within their jurisdiction; and moreover they shall be and hereby are invested in their corporate capacity with the title, care and custody of all school houses, school house sites, school libraries, apparatus or other property belonging to the school districts as now organized, or which may hereafter be organized, within the limits of their jurisdiction, with full power to control the same in such manner as they may think will best subserve the interests of common schools and the cause of education; and when in the opinion of the board any school house or school house site has become unnecessary, they may sell and convey the same in the name of the township board of education of the proper township; such conveyance to be executed by the chairman and clerk of said board, and shall pay the avails over to the township treasurer of the proper township for the benefit of schools, and all conveyances of real estate which may be made to said board, shall be to said board in their corporate name and to their successors in office.

Powers and
duties.

§ 12. It shall be the duty of the township board of education to hold regular sessions on the third Monday of April and on the third Monday of October in each year, in the usual place of holding township elections, or at such place in the immediate neighborhood as may be convenient for the transaction of any business which may be necessary in relation to the subject of either the primary or graded schools of the township, with power to adjourn from time to time, or to hold special meetings at any other time or place within the proper township as they may think desirable for the transaction of business as aforesaid, and at all such meetings shall appoint one of their number to the chair, and in case of the absence of the township clerk, may appoint one of their own number to serve temporarily as clerk.

Sessions of
the board, regular and adjourned.

§ 13. The township board of education shall have the management and control of all the central and high schools of their proper township which may be established therein under the authority of this act, with full power in respect to such

Management
of high
school.

When to act
as local di-
rectors.

schools, to employ, pay, and dismiss teachers, to build, repair and furnish the necessary school houses, purchase or lease sites therefor, or rent suitable school rooms, and make all other necessary provisions relative to such schools as they may deem proper; and it shall also be the duty of said board of education, to exercise all the powers conferred on local directors in respect to sub-district schools, whenever such local directors shall neglect to discharge their duties in any sub-district as required by this act; and it shall also be the further duty of said board to prescribe rules and regulations for the government of all the common schools within their jurisdiction; said board of education may provide for German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together, and if the board shall deem it necessary, they may appoint one of their number the acting manager of schools for the township, who shall do and perform all such duties as the board may prescribe in relation to the management and supervision of the different schools, and the educational interests of the township, and may allow him a reasonable compensation for his services.

Map of town-
ship.
Board may
alter sub-dis-
tricts.
Sub-districts
not to contain
less than 60
scholars, ex-
cept.
School in each
sub-district.

§ 14. The said board shall prepare, or cause to be prepared, a map of their township, as often as they deem necessary, on which shall be designated the sub-districts of the township, which they may change or alter at any regular session, and the number of scholars assigned to each; but no sub-district shall contain within its limits, less than sixty resident scholars, by enumeration, except in cases where in the opinion of the board it is necessary to reduce the number; and it shall be the duty of the board to establish a school in each sub-district of the township of such grade as the public good in their opinion may require; and in the location of primary schools, or schools of higher grade, the board shall have reference to population and neighborhood, paying due regard to any school house already built, or site procured, as well as to all other circumstances proper to be considered so as to promote the best interests of schools.

Assignment of
scholars to
higher schools

§ 15. The board shall have power to assign such number of scholars to the several primary schools as they may think best, and when such assignment has been made, shall furnish the teacher a list of the scholars so assigned; and the board shall also have full power to regulate and control the admission of scholars to schools of a higher grade, according to age and attainments, and may admit scholars over twenty-one years of age, and may suspend, or authorize the local directors to suspend, from the privileges of either of the schools, any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session of the school.

§ 16. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining township, or whenever it may be desirable to establish a school composed of parts of two or more townships, it shall be the duty of the respective boards of the townships in which such persons reside, or in which such schools may be situated, or of the townships or parts of which the school is to be composed, to transfer such persons for educational purposes to the township in which such school house is or may be located; but the enumeration of scholars shall be taken in each township as if no such transfer had been made, and such school when so composed, shall be supported from the school funds of the respective townships from which the scholars may have been transferred; and the board of that township in which the school house is situated, shall have the control and management of such school, and the board of the adjoining township or townships so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the auditor of their proper county, as part of their annual estimates for school purposes, and draw orders on their respective township treasurers for such sum as will be in proportion to the enumeration of scholars so transferred, in favor of the board of that township in which such school is located, to be appropriated to the payment of teachers, and for other purposes connected with the establishment or maintenance of said school as far as applicable.

Division of township for educational purposes.

§ 17. The said board shall have power to determine the studies to be pursued, and the school books to be used in the several schools under their control, and shall make and enforce such rules and regulations relative to the use and preservation of the school libraries and apparatus as they may think advisable, and shall appoint, or authorize the local directors to appoint a suitable person to act as librarian and to take charge of the school apparatus, resident at some convenient place in the neighborhood where the school is kept, and may require such librarian to give bond for the faithful discharge of his duties, and allow him such compensation as they may think reasonable.

Board to determine studies, books.

Librarian.

REPORT REQUIRED OF TEACHERS.

§ 18. It shall be the duty of the school teacher to make out and file with the township clerk at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the town-

What report must show.

ship board or local directors, and until such report shall have been certified and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services.

STATEMENT REQUIRED OF DIRECTORS.

Board of education to report to auditor.

§ 19. The board of education in each township shall prepare, or cause to be prepared and forwarded to the county auditor at the same time when the return of the enumeration of scholars is required to be made, a statement exhibiting the number of children in the township, between the ages of five and twenty-one years, distinguishing between male and female, the number of schools, specifying the different grades, the number of teachers male and female, the number of children male and female who have attended school during the past year, the average attendance, the length of the terms of schools, compensation of teachers male and female, the number and condition of the school houses and furniture and the estimated value thereof; the number and condition of the books in the school libraries; the number of libraries; the kind of school books used in the schools; the number and value of school apparatus, and a full account of the expenditures for school purposes, together with such other statistics and information in relation to schools, as the state commissioner of schools may require.

CENTRAL OR HIGH SCHOOLS.

Establishment of, and classification of children in.

§ 20. Each township board of education shall have power, as hereinafter provided, to establish in their respective townships such number of graded schools, or such modifications of them, as the public interests may require; and in case of the establishment of such graded schools, it shall be the duty of the board so to classify the children of the township as to secure to all as far as practicable an equitable participation in the advantages thereof; and the board shall designate the sub-districts by numbering them, and schools of a higher grade than primary, shall be known by the appellation of central or high schools.

Vote to be taken in establishing such schools.

§ 21. Whenever, in the opinion of the board of education, it shall become necessary or desirable to provide one or more such central or high schools in their respective townships, the said board shall estimate the probable cost thereof, and call a special meeting of the qualified voters of the township and who are not residents of any of the territory or districts named in the first section of this act, over which the jurisdiction of the township and local directors is excluded, at the usual place of holding elections, first giving twenty days' notice of the time

and object of holding such meeting, by posting the same in some public place in each of the several sub-districts of the township, in which notice the amount or rate of tax as estimated by the board shall be stated, and the electors, when convened in pursuance of such notice, shall decide by vote, any questions which may be deemed important in relation to the cost and location of the building or buildings, or other provisions necessary for the establishment of any such school, and also the amount of township tax which may be levied for the purpose; and the chairman and clerk of the board shall be the chairman and clerk of the meeting, and the clerk shall record in the records of the board the action of the meeting, and the board shall be governed by the direction and vote of said meeting in relation to the subjects or matters so submitted.

ANNUAL ESTIMATES TO BE CERTIFIED BY THE BOARD.

§ 22. It shall be the duty of the board of education in any organized township of the State, annually to determine by estimate, as nearly as practicable, the entire amount of money necessary to be expended in the township for school purposes other than for the payment of teachers, and also such additional amount as the board may think necessary, not exceeding two mills on the dollar valuation of the taxable property of the township, for the exclusive purpose of sustaining teachers in the central or high schools, or for the purpose of prolonging, after the state funds have been exhausted, the terms of the several sub-district or primary schools in the township, or for both purposes, as the board may adjudge best, which several amounts of money so estimated, the board shall make known by certificate in writing, on or before the first Monday in June in each year, including any tax which may have been voted by a special meeting of electors as provided in the preceding section, to the auditor of the proper county, who shall thereupon assess the entire amount of such estimates on all the taxable property of the township not included in any city or incorporated village or territory annexed thereto forming any special district, to be entered by said auditor on the tax duplicate of the county, and collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; and when collected shall be paid over to the treasurer of the proper township, on the order of the county auditor; and said county treasurer shall be entitled to receive for collection, one per cent. on all moneys by him collected for school purposes, and no more.

Auditor to assess the estimates on the taxable property of township.

§ 23. The township board of education shall have power, when in their opinion justice and equity require it, to estimate separately the cost of purchasing a school house site and erecting or repairing a school house thereon, in any particular sub-

When tax to be assessed on property in sub-district.

district of the township wherein the inhabitants have not heretofore borne a reasonable share of the burden of taxation for such purpose in comparison with other sub-districts in the township, and certify such portion as they may deem just and equitable, of the amount of such estimate to the county auditor of the proper county, together with a map of the lands and names of the tax payers in any such sub-district, which amount so certified shall be assessed by the auditor on the property therein subject to taxation, and placed on the county duplicate, specially, and be collected and paid over in the same manner as other school taxes, and be applied for the specific purpose of providing a school house in such sub-district.

DISBURSEMENT OF SCHOOL FUNDS.

Funds to be
paid out on order of clerk,
except teachers.

How teachers
paid.

Disbursement
of funds.

§ 24. All school funds which may come into the hands of the township treasurer, from whatever source, shall be paid out only on the order of the clerk of the board of education, under the direction of the board: except in paying teachers for their services, the said clerk may, on such teachers' presenting their certificates of qualification, and depositing with the clerk true copies thereof, draw the requisite orders on the treasurer for such amount as may have been certified to be due by any two of the local directors of the proper sub-district in which the teacher was employed; and so much of the school moneys coming into the hands of the treasurer, as may be derived from the state tax, or from any township tax levied for the continuation of schools after the state fund has been exhausted, shall be applicable only to the payment of teachers in the proper township, and shall be drawn for no other purpose whatever; and all school funds made applicable to the payment of teachers only, shall be distributed to the several sub-districts and fractional parts thereof, in the township, in proportion to the enumeration of scholars, with the exception of so much of the township tax as may have been levied and reserved by the board for sustaining teachers in the central or or high schools; and such school funds as arise from the sale or rents of section sixteen, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong. All other school funds of the township, not raised for the central or high schools, nor made applicable to the payment of teachers, as aforesaid, shall be applied, under the direction of the board, in repairing, building or furnishing school houses, in procuring school house sites, and in making such other provisions for schools in the sub-districts of the proper township, as may in the opinion of the board be necessary; and each township board shall make the necessary provisions for continuing the schools in operation in their respective townships for at least seven months in each year.

DIVISION OF DUTIES AND LIABILITY OF CLERK.

§ 25. The clerk of the board of education, or any one more of the board designated for that purpose, or the acting manager of schools of the township, may do and perform all such duties and services connected with the interests of schools as the board may direct, and report the same to the board for their action and approval; and it shall be the duty of the clerk of the board to keep a full record thereof in connection with the records of the other official proceedings of the board, and in case of failure to keep such record or other records required by this act, the clerk of the board shall be liable in a civil action for all loss or damages that may ensue to any person or persons or to the school district, in the name of such person or persons, or board of school directors, as the case may be, and shall moreover be liable on complaint filed in the name of the State of Ohio, before any justice of the peace or other court having jurisdiction, to a fine not exceeding one hundred dollars, which, when collected, shall be paid over to the treasurer of the proper township for the benefit of schools.

Duties of clerk, &c.

SETTLEMENT WITH TREASURER.

§ 26. It shall be the duty of the board of education to make settlement with the township treasurer at their regular session in April annually; but if for want of time or other reason a settlement cannot be made at said session, then it shall be the duty of the board to appoint a committee composed of one or more of their own members to make such settlement as soon as practicable, and report the result to the clerk of the board, who shall record an abstract thereof in the records of the board.

Board to settle with township treasurer.

TREASURER, AND HIS DUTIES.

§ 27. The township treasurer in each township shall be the treasurer of all school funds for school purposes belonging to the township, arising from whatever sources, and on his election, and before entering upon the duties of his office, he shall give bond with sufficient security in double the probable amount of money that shall come into his hands, payable to the State of Ohio, to be approved by the trustees of the township, conditioned for the faithful disbursement according to law of all such funds as shall from time to time come into his hands, and on the forfeiture of such bond it shall be the duty of the township clerk to prosecute and collect the same for the use of the schools in the township; if such township clerk shall neglect or refuse so to prosecute, then any freeholder may cause such prosecution to be instituted.

Duties of township treasurer—to give bond—its condition, &c.

Certificate to
be furnished
auditor.

§ 28. Before the county auditor shall issue to the township treasurer any order on the county treasurer for the payment of any school funds belonging to the township, such township treasurer shall furnish the auditor with a certificate from the township clerk, that such treasurer has executed and filed with him a bond, as provided for in the foregoing section, and also stating the amount of said bond, and the auditor shall in no case permit the township treasurer to have in his hands at any one time an amount of school funds over one-half the amount of the penalty in such bond; and the township trustees shall allow the township treasurer a compensation equal to one per cent. on all school funds disbursed by him, to be paid on the order of the trustees out of the township treasury.

Settlement of
auditor and
treasurer.

§ 29. The township treasurer shall annually between the first and twentieth of February, settle with the county auditor and account to him for all moneys received, from whom and on what account, and the amount paid out for school purposes in his township; the auditor shall examine the vouchers for such payments, and if satisfied with the correctness thereof, shall certify the same, which certificate shall be prima facie a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office, all books and papers with all moneys or other property in his hands belonging to said township, or the schools therein, and also all orders he may have redeemed since his last annual settlement with the county auditor, and take the receipt of his successor therefor, which he shall deposit with the township clerk within ten days thereafter, and for making such annual settlement he shall be entitled to receive the sum of one dollar, to be paid out of the county treasury on the order of the county auditor.

Penalty a-
gainst town-
ship treasurer.

§ 30. In case the township treasurer shall fail to make such annual settlement within the time, as prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the State of Ohio, and when collected, to be applied to the use of common schools in the proper township; and it is hereby made the duty of the county auditor to proceed forthwith in case of such failure by suit against such treasurer, before any justice of the peace of his county, to recover the penalty aforesaid; but when it shall appear on trial to the satisfaction of said justice, that said treasurer was prevented from making such settlement within the time prescribed, by sickness, or unavoidable absence from home, and that such settlement has since been actually made, it shall be lawful for the justice to discharge such treasurer on payment of costs.

SCHOOLS FOR COLORED CHILDREN.

§ 31. The township boards of education in this State, in their respective townships, and the several other boards of education, and the trustees, visitors, and directors of schools, or other officers having authority in the premises, of each city or incorporated village, shall be, and they are hereby authorized and required to establish within their respective jurisdictions, one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, so as to afford them, as far as practicable under all the circumstances, the advantages and privileges of a common school education; and all such schools so established for colored children shall be under the control and management of the board of education, or other school officers who have in charge the educational interests of the other schools; but in case the average number of colored children in attendance shall be less than fifteen for any one month, it shall be the duty of said board of education, or other school officers, to discontinue said school or schools for any period not exceeding six months at any one time; and if the number of colored children shall be less than fifteen, the directors shall reserve the money raised on the number of said colored children, and the money so reserved shall be appropriated for the education of such colored children under the direction of the township board.

Schools for
colored chil-
dren.

OF CITIES AND VILLAGES.

§ 32. Each city or incorporated village, including the territory annexed to the same for school purposes, not otherwise specially regulated by charter or governed as to schools by laws as specified in the sixty-seventh section of this act, and which with the territory annexed, contains not less than three hundred inhabitants, shall be and hereby is created a separate school district; and the qualified voters of such city or village, with the territory annexed, shall at the same time and in the same manner that local directors of the sub-districts of the township are elected by the provisions of this act, proceed to elect three persons who shall constitute a board of education for such city or village with the territory so annexed, and such board shall have the same powers, perform the same duties, and be subject to the same penalties as township boards of education: provided, that by agreement between the board of education of the township in which such city or village with the territory annexed may be situated, and the board of education of such city or village with the territory annexed, transfers of territory not within the limits of such corporation may be made to or from the districts provided for in this section.

What cities
and villages
are school dis-
tricts.

Power of board
in cities and
towns.

§ 33. That said board of education in any city or incorporated village, shall be authorized, when they think it advisable, to divide such city or village into sub-districts; and they may establish schools of different grades, and ordain such rules and regulations for the government and discipline of such schools as they may think conducive to the public good; and it shall be lawful for the township board of education in any township in which such city or incorporated village is situate, by and with the consent of the board of education of any such city or incorporated village, to transfer thereto for educational purposes the scholars of such parts of their respective townships as lie adjacent thereto, and all such transfers shall be controlled, and such schools supported in the same manner, and on the same principles, as in case of like transfers for the convenience of schools where two or more townships adjoin, as provided in this act.

Clerk of the
board—his
duties.

§ 34. In all such cities or incorporated villages, the clerk or recorder of such incorporated body shall be the clerk of the board of education, and he shall do and perform all the duties required of the clerk of a township board of education, and such other duties as the board of education may, from time to time, prescribe; and all orders of the board of education for the payment of money shall be countersigned by the clerk or recorder of said corporation, and it shall be the duty of the treasurer of any such city or incorporated village, to receive and disburse the school funds of such city or village, in the same manner as is required of the township treasurers in their respective townships, and for his services shall be entitled to the same compensation; provided, that the board of education shall require the treasurer to enter into a bond as required of township treasurers, and that the said treasurer shall furnish the auditor a certificate from the clerk or recorder of such city or incorporated village, that such treasurer has executed and deposited such bond, stating also the amount, as is required of township treasurers in similar cases.

Duty of treasurer of city or town.

Further powers of the board.

§ 35. The board of education of any city or incorporated village, shall have and may exercise all the powers which are by this act conferred upon the township boards of education, and shall do and perform the like duties in all respects so far as applicable, and the school funds shall be divided among the sub-districts so as to make the distribution as nearly equitable as possible. All taxes for building, purchasing, repairing or furnishing school houses and lots shall be equally assessed on all the property subject to taxation in such city or incorporated village, and the board of education in expending the same shall make the necessary provisions for the sub-districts.

Evening schools.

§ 36. In any district or sub-district composed in whole or in part of any city or incorporated village, the board of education may, at their discretion, provide a suitable number of eve-

ning schools, for the instruction of such youth over twelve years of age, as are prevented by their daily avocation from attending day schools, subject to such regulations as said board, from time to time, may adopt for the government thereof.

APPORTIONMENT OF SCHOOL FUNDS.

§ 37. The auditor of state shall, annually, apportion the common school funds among the different counties, upon the enumeration and returns made to him by the state commissioner of common schools, and certify the amount so apportioned to the county auditor of each county, stating from what sources the same is derived, which said sum the several county treasurers shall retain in their respective treasuries from the state funds; and the county auditors shall, annually, and immediately after their annual settlement with the county treasurer, apportion the school funds for their respective counties, according to the enumeration and returns in their respective offices; and no township or other district, city or village, which shall have failed to make and return such enumeration, shall be entitled to receive any portion of the common school funds. And in making such distribution, each county auditor shall apportion all moneys collected on the tax duplicate of any township, for the use of schools, to such township; all moneys received from the State treasury, on account of interest on the money accruing from the sale of section sixteen, or other lands in lieu thereof, to the civil townships and parts of civil townships in the original surveyed township, or fractional township to which such land belongs; all moneys received by the county treasurer on account of the Virginia Military school fund, United States Military District, and Connecticut Western Reserve, according to laws regulating the same; and all other moneys for the use of schools in the county, and not otherwise appropriated by law, to the proper township; and he shall, immediately after making said apportionment, enter the same into a book to be kept for that purpose, and shall furnish the township treasurers and township clerks, treasurers and recorders of incorporated cities or villages, as the case may be, each with a copy of said apportionment, and give an order on the county treasurer to each township treasurer or to such treasurer as may be entitled to receive the same, for the amount of money belonging to his respective township, city or village, and take a receipt from such treasurer for the amount thus received; and the said county auditor shall collect, or cause to be collected, the fines and all other moneys for school purposes, in his county, and pay the same over to the county treasurer; and he shall inspect all accounts of interest for section sixteen, or other school lands, whether the interest is paid by the State or by the debtors, and take all the proper measures to secure to each township its full amount of school funds.

State auditor to apportion funds and certify apportionment.

County auditor to make apportionment in county, and how.

Where part of
section 16 lies
in two coun-
ties.

§ 38. When any original surveyed township in which section sixteen has been sold, shall lie in two or more counties, the auditors of the respective counties shall certify to the auditor of the county in which that portion of said township lies containing said section sixteen, the enumeration of the scholars in that part of said township embraced within their respective counties; and the auditor of said county in which said section sixteen is situate shall apportion the fund derived from said section sixteen to the different portions of said township according to said enumeration, and shall certify to the auditors of the other counties the amount belonging to the parts of said township situate in their respective counties, and draw an order in favor of the treasurers of the other counties on the treasurer of his own county for the amount going to each; and the auditors of the respective counties shall apportion the same, in their respective counties, to such portions or parts thereof as may be entitled thereto.

Interest on
section 16.

§ 39. The interest on the purchase of any such section sixteen belonging to any such original surveyed township, so as aforesaid lying in two or more counties, shall be paid over on the order of the auditor of that county in which such section sixteen is embraced, to the treasurer of the same county, to be apportioned as is pointed out in the preceding section.

RETURN OF ABSTRACT TO STATE COMMISSIONER.

Duty of coun-
ty auditor as
to returns of
State Com-
missioner,
&c.

§ 40. The auditor of each and every county shall, on or before the twentieth day of December, annually, make out and transmit to the commissioner of common schools, at Columbus, an abstract of all the returns of school statistics made to him from the several townships in his county, according to the form that may be prescribed by the State Commissioner; and he shall cause to be distributed all such circulars, blanks, and other papers, including school laws and documents, in the several townships in the county, as said commissioners shall lawfully require. In case the county auditor shall fail, from any cause, to make return of the abstract as aforesaid, it shall be the duty of the county commissioners to deduct for every such failure, from the annual salary or allowance made to the auditor for his services, the sum of fifty dollars.

Penalty
against coun-
ty auditor.

Compensation
to county au-
ditor.

§ 41. The county commissioners of each county in this State shall make the same allowance to the county auditors, out of their respective county treasuries, for services performed and expenses incurred under this act, as is allowed for other services of like nature.

Liability of
the clerk and
county audit-
or for loss.

§ 42. The township clerks and county auditors shall be responsible for all losses sustained by any township or county, by reason of any failure on their respective parts to make and return the enumerations and abstracts thereof as herein pro-

vided, and shall each be liable for the same, in a civil action, at the suit of the State of Ohio; and the amounts so recovered shall be, apportioned in the same manner as the school funds would have been to the respective counties or townships, as the case may be.

SCHOOL HOUSES EXEMPT FROM SALE ON EXECUTION.

§ 43. Each and every lot or parcel of land which heretofore has been, or hereafter shall be appropriated for the use of common schools in this State, on which there has been or shall be a school house erected, and which has been or shall be occupied for the purpose of accommodating a common school of whatever grade, in the usual manner, from time to time, howsoever or by whomsoever the legal title to the same may be held and vested, shall be and the same is hereby exempted from sale, on any execution, or other writ, or order in the nature of an execution; Provided that the lot of land so exempted, shall not exceed four acres, and if there be any excess, that portion most convenient for school purposes shall remain exempt as aforesaid, to be determined by the proper school directors, or other officers having charge of schools.

What school property exempt from execution.

APPOINTMENT OF SCHOOL EXAMINERS AND THEIR DUTIES.

§ 44. It shall be the duty of the probate judge in the several counties of this State, as soon after the election of school officers under the provisions of this act as practicable, to appoint a county board of school examiners, to consist of three competent persons, resident in the county, who shall hold their office for the term of two years, and until their successors are appointed; and all vacancies in said board which may thereafter occur, whether from expiration of the term of office, refusal to serve, or otherwise, shall be filled by like appointment by said judge.

Probate judge to appoint board of examiners.

§ 45. It shall be the duty of the examiners to fix upon the time of holding meetings for the examination of teachers, in such places in their respective counties as will, in their opinion, best accommodate the greatest number of candidates for examination; notice of all such meetings having been published in some newspaper of general circulation in their respective counties; and at such meetings, any two of said board shall be competent to examine applicants and grant certificates; but no fee or charge shall be made for a certificate. No certificate of qualification shall be valid in any county except that in which the examination took place, nor for a longer period than two years; and if at any time the recipient of the certificate shall be found incompetent or negligent, the examiners, or any two of them, may revoke the same, and require

Powers and duties of board.

such teacher to be dismissed; but such teachers shall be entitled to receive payment for services only up to the time of such dismissal; and no person shall be employed as a teacher in any primary common school, unless such person shall have first obtained from said examiners, or any two of them, a certificate of good moral character, and that he or she is qualified to teach orthography, reading, writing, arithmetic, geography, and English grammar; and in case such person intends to teach in any common school of higher grade, he or she shall first obtain a certificate of the requisite qualifications in addition to the branches aforesaid.

Clerk of
board.

Rules of
board; their
fees,

and station-
ery.

§ 46. The said board of examiners shall appoint one of their number to serve as clerk, who shall keep a record of their proceedings, noting the number and date of each certificate given, to whom, for what term of time, and for what branches of studies; and the said board may make all needful rules and regulations for the proper discharge of their duties. The members of the board shall be entitled to receive each one dollar and fifty cents for every day necessarily engaged in official service, to be paid out of the county treasury, on the order of the county auditor, exclusive of blank books and stationery which the county auditor shall furnish; and the county auditor may require the accounts, when presented, to be substantiated on oath, which said auditor may administer and file in his office.

STATE COMMISSIONER.

When com-
missioner
elected.

Term of office.

Vacancy, how
filled.

His official
bond,

and oath.

§ 47. There shall be elected by the qualified electors of this State, at the next annual election for State and county officers, and every three years thereafter, a State commissioner of common schools, who shall hold his office for the term of three years and until his successor is elected and qualified. The election of said commissioner, and the returns thereof, shall be the same, in all respects, as is provided for the election of judges of the supreme court; and in case a vacancy shall happen in said office, by death, resignation, or otherwise, the Governor shall fill the same by appointment, for the unexpired term.

§ 48. Before entering upon the discharge of his official duties, the said commissioner shall give bond, in the penal sum of ten thousand dollars, to the State of Ohio, with two or more sureties, to the acceptance of the Secretary of State, conditioned that he will truly account for and apply all moneys or other property which may come into his hands in his official capacity, for the use and benefit of common schools, and that he will faithfully perform the duties enjoined upon him according to law; and he shall also take and subscribe an oath or affirmation to support the Constitution of the United States and

of the State of Ohio, and diligently and faithfully to discharge the duties of his office as prescribed by law, which bond, with the certificate of his oath endorsed thereon, shall be filed with the Treasurer of State.

§ 49. The books and papers of his department shall be kept at the seat of government, where a suitable office shall be furnished by the State, at which he shall give attendance when not absent on public business; and the State Librarian shall, in addition to the duties of his office, discharge the duties of secretary to the commissioner of common schools, under his direction.

Office, &c., at seat of government.

His secretary.

§ 50. It shall be the duty of the commissioner to spend, annually, on an average, at least ten days in each judicial district of the State, superintending and encouraging teachers' institutes, conferring with township boards of education or other school officers, counseling teachers, visiting schools, and delivering lectures on topics calculated to subserve the interests of popular education.

His duties in visiting the several judicial districts,

§ 51. As soon as the revenues, to be raised as hereinafter provided, for the purpose of furnishing the common schools with libraries and apparatus, will admit, it shall be the duty of the said commissioner, to purchase the same, and the books and apparatus so purchased shall be distributed through the auditor's office of each county to the board of education in each township, city or incorporated village, according to the enumeration of scholars.

and in purchasing books and apparatus.

§ 52. He shall also exercise such supervision over the educational funds of the State as may be necessary to secure their safety and right application, and distribution according to law. He shall have power to require of county auditors, township boards of education, or other local school officers, clerks and treasurers of townships, county treasurers and clerks, recorders and treasurers of cities and villages, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools, and the management thereof, as he may deem important.

His supervision over school funds.

May require reports from certain officers.

§ 53. He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under this act, and shall cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith.

To prepare forms, &c.

§ 54. He shall cause as many copies of the laws relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals and other documents for the use of the school officers therein as often after the first distribution as any change in said laws may be made of suffi-

Duties as to distribution of school laws, &c.

cient importance in the opinion of the commissioner to require a republication and distribution thereof.

His annual
report;

§ 55. It shall be the duty of said commissioner of common schools to make an annual report, on or before the twentieth day of January in each and every year, to the General Assembly, when the body shall be in session any such year; and when not in session in any one year, then the said report shall be made to the Governor, who shall cause the same to be published, and shall also communicate a copy thereof to the next General Assembly.

What it shall
present.

§ 56. The State Commissioner, in the annual report of his labors and observations, shall present a statement of the condition and amount of all funds and property appropriated to purposes of education; a statement of the number of common schools in the State, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of private or select schools in the State, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, and the number of teachers attending them; a statement of the estimates and accounts of the expenditures of the public school funds of every description; a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the State as he may think of importance.

Salary of com-
missioner.

§ 57. The said commissioner shall be entitled to receive for his services the sum of fifteen hundred dollars annually, payable quarterly, out of the State treasury, on the warrant of the Auditor of State.

SCHOOL LIBRARIES.

One-tenth of
a mill to be
assessed for
libraries ;

§ 58. For the purpose of furnishing school libraries and apparatus, to all the common schools in the State, and for the further purpose of sustaining and increasing such libraries, and keeping up a supply of school apparatus in the schools, as aforesaid, from time to time, as may be considered necessary, in order to afford equal facilities to the said schools in this respect, as nearly as practicable, there shall hereafter be assessed, collected, and paid annually, in the same manner as the State and county revenues are assessed, collected and paid on the grand list of property taxable for State purposes, a State tax of one tenth of one mill on the dollar valuation, to be applied exclusively for the purposes aforesaid, and the attendant expenses, under the direction of the commissioner of common schools. In purchasing the libraries for the common schools, no books of a sectarian or denominational character shall be purchased for said libraries.

§ 59. The amount of said tax, when collected, shall be paid over by the county treasurers to the State Treasurer, at the time of making their annual settlement, and shall be paid out by that officer, for the purposes aforesaid, upon the warrant of the State Auditor. which is to be paid to State Treasurer.

§ 60. It shall be the duty of the county auditor, when the said libraries or apparatus shall be received, to distribute the same to the clerks of the township boards of education, or other local school officers, in their respective counties, having in charge the interests of common schools; and the books and apparatus, so furnished, shall be deemed the property of said several boards, or local school officers, to whom the same may have been delivered, and shall not be subject to execution, sale or alienation, for any cause whatever. Distribution of books and apparatus.

§ 61. The local boards of education, or other school officers having charge of common schools shall be held accountable for the preservation of said libraries and apparatus; and they shall have power to prescribe the time of taking and the periods of returning the books belonging to the libraries, and also to assess and collect the damages which may be done to the books by persons entitled to their use; and also to provide for the safe-keeping of the school apparatus. Who accountable for same.

§ 62. It shall be the duty of the local school boards, or other school officers having charge of schools, to appoint the librarians and determine the places where the libraries shall be deposited, selecting such central points as will best accommodate the schools and families of the districts or sub-districts, as hereinbefore provided; and every family in each district or sub-district shall be entitled to the use of one volume at a time from the school library, although no member of such family attends any of the schools of the township; and the library shall be open, under the inspection of the librarian, at stated periods throughout the year, to be prescribed by the board of education, or other proper school officers, without regard to the sessions of the schools. Who to appoint librarian, &c.
Families entitled to books.

STATE SCHOOL FUND.

§ 63. For the purpose of affording the advantages of a free education to all the youth of this State, the state common school fund shall hereafter consist of such sum as will be produced by the annual levy and assessment of two mills upon the dollar valuation, on the grand list of the taxable property of the State; and there is hereby levied and assessed annually, in addition to the revenues required for general purposes, the said two mills upon the dollar valuation, as aforesaid; and the amount so levied and assessed, shall be collected in the same manner as other State taxes, and when collected, shall be annually distributed to the several counties of the State, in pro Two mills on the dollar to be assessed for school purposes, and collected and distributed.

portion to the enumeration of scholars, and be applied exclusively to the support of common schools.

MISCELLANEOUS PROVISIONS.

Debts of districts to be provided for.

§ 64. The debts which have heretofore been contracted by any school district for school purposes, shall be provided for by the estimates of the proper school boards created under the provisions of this act.

Process against school officers.

§ 65. The process, in all suits against any township board of education, or other local officers having charge of any of the public schools under the provisions of this act, shall be by summons, and shall be executed by leaving a copy thereof with the clerk or secretary of such board, or other school officers, at least ten days before the return day thereof. And any suit either in favor of or against any such board, or other school officers, shall be prosecuted or defended, as the case may be, by the prosecuting attorney of the proper county, as a part of his official duties.

Duty of prosecuting attorney.

How schools governed under other laws may accept this act.

§ 66. The local board of education, or other local officers having charge of schools in any city, township or village, in which common schools have been organized under the act for the better regulation of public schools in cities, towns, &c., or under any special act, shall be, and are hereby authorized, whenever they may deem it expedient, to call a meeting of the qualified voters of any such city, township or village, on giving thirty days public notice thereof, to determine by vote whether the common schools of such city, township or village, shall be conducted and managed in accordance with the provisions of this act; and if a majority of the voters are found to be in favor of the change, then said local board, or other local school officers, shall thereafter proceed, in accordance with the provisions of this act, until their successors shall be elected and qualified; and such city or village may provide by ordinance for the election or appointment of a board of education, prescribing their number and terms of office; and such board, when so elected or appointed and qualified, shall, together with the clerk or recorder of such city or village, possess the same powers and discharge the same duties, within the limits of their jurisdiction, as local directors and boards of education in townships.

Certain acts not repealed by this act;

§ 67. This act shall not be so construed as to repeal, change, or modify in any respect, the several provisions of the "act for the support and better regulation of common schools in the town of Akron," passed February 8, 1847, and the acts amendatory thereto; or the "act for the better regulation of schools in cities, towns, &c.," passed February 21, 1849, and the acts amendatory thereto, nor the several acts cre-

ating special school districts, or any other special acts in relation to schools, except that it is hereby made the duty of the several boards of education, or other school officers acting under the provisions of any of the acts to which reference has been made in this section, to make similar reports of school statistics annually, as required of school officers by this act; nor shall it be lawful for any county treasurer to pay over any portion of the school fund to any local treasurer, board of education, or other school officers of any city, township, or village, organized as to schools either under a general or a special law, except on the order of the auditor of the proper county; and no such order shall be drawn by the county auditor, unless the local treasurer, clerk, recorder, or secretary of such board, or other school officers, shall first deposit with said auditor annually, an abstract of the enumeration of scholars and other statistics relative to the schools under their charge, as required by this act, of teachers, local directors, and boards of education in townships.

but such acts
affected, and
how.

§ 68. The respective township boards of education, and their successors in office, shall have power to take and hold in trust, for the use and benefit of any central or high school, or sub-district school in the township, any grant or devise of land, and any donation or bequest of money or other personal property, to be applied by the board to the maintenance and support of any such school or schools, according to the intention of the grant or donation.

Power of
board to hold
real estate.

ACTS REPEALED.

§ 69. That an "act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March sixteenth, one thousand eight hundred and thirty-nine; an "act to abolish the office of superintendent of common common schools," passed March twenty-third, one thousand eight hundred and forty; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," of March seventh, one thousand eight hundred and thirty-eight, and the act amendatory thereto, passed March twenty-ninth, one thousand eight hundred and forty-one; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and forty-two; an act further to amend the act entitled "an act for the support and better regulation of common schools,

Repealing
section.

and to create permanently the office of superintendent," passed March eleventh, one thousand eight hundred and forty-three; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-four; an "act to amend the sixth section of an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-five; an act to amend the act entitled "an act to amend an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-five; "an act authorizing school directors to establish libraries for the use of common schools," passed February twenty-eighth, one thousand eight hundred and forty-six; an act to amend an act, passed March eleventh, one thousand eight hundred and forty-three, entitled "an act further to amend the act entitled 'an act for the support and better regulation of common schools and to create permanently the office of superintendent,'" passed March second, one thousand eight hundred and forty-six; "an act to provide for the appointment of county superintendents of common schools, and defining their duties in certain counties therein named," passed February eighth, one thousand eight hundred and forty-seven; an act further to amend the act entitled "an act to amend an act entitled 'an act for the support and better regulation of common schools and to create permanently the office of superintendent,'" passed February eighth, one thousand eight hundred and forty-seven; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-eight; "an act to secure the returns of the statistics of common schools," passed January twenty-first, one thousand eight hundred and forty-eight; an act to provide for the establishment of common schools for the education of the children of black and mulatto persons, and to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-eight; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-

eight; an act to amend the eighteenth section of the school law of March seventh, one thousand eight hundred and thirty-eight, passed February fourteenth, one thousand eight hundred and forty-eight; "an act to authorize the establishment of separate schools for the education of colored children, and for other purposes," passed February tenth, one thousand eight hundred and forty-nine; an act to amend an act, passed February twenty-fourth, one thousand eight hundred and forty-eight, entitled "an act to amend the act entitled an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred thirty-eight, and the acts amendatory thereto, passed March sixth, one thousand eight hundred and forty-nine; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-nine; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed March twenty-fourth, one thousand eight hundred and forty-nine; an act in relation to school district tax, providing for the annual school district meetings, and requiring maps of school districts, passed March seventh, one thousand eight hundred and fifty; an act for the appointment of a state board of public instruction, passed March twenty-second, one thousand eight hundred and fifty; an act supplementary to the act for the appointment of a state board of public instruction, passed March twenty-third, one thousand eight hundred and fifty; an "act providing for school districts, and school district meetings, prescribing the duties of district officers and clerks and treasurers of townships, and increasing the state and county common school funds," passed March twenty-fourth, one thousand eight hundred and fifty-one,—be and the same are hereby repealed; provided that the obligations or liabilities incurred, and the rights acquired under the provisions of any of the acts hereby repealed, shall remain, and be in no wise altered or affected, but may be enforced as if this act had not been passed; and the school officers in the several school districts of the State, as now organized, shall hold their respective offices, and perform their respective duties, until the local directors herein provided for, shall have been elected and qualified.

Liabilities incurred and rights acquired, not affected.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

Making appropriations for the year 1853.

Appropriations for 1853.

Salaries of executive officers, lieutenant governor, librarian, members of board public works, members & officers of general assembly.

Secretary of governor, and clerks in the executive offices, contingent fund of auditor and secretary, salaries of judges.

Lunatic asylum.

Deaf & Dumb asylum.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the following sums be and they are hereby appropriated out of any money in the treasury, not otherwise especially appropriated, to be paid for the year one thousand eight hundred and fifty-three, viz: for the payment of the salaries of the governor, lieutenant governor, auditor, treasurer and secretary of state, the attorney general, members of the board of public works and librarian, thirteen thousand dollars; for the payment of the members of the general assembly, their clerks and assistant clerks, sergeant-at-arms and assistant sergeant-at-arms, door keepers and messenger boys, and for bringing up the records of either house by the clerks thereof, under the law of January twenty-first, eighteen hundred and thirty-nine, the amount to be paid on the certificate of the secretary of state at a rate not exceeding the usual per diem of said clerks, the additional sum of sixty-two thousand dollars; for paying the secretary of the governor, clerks in the auditor's office, two clerks in the treasurer's office, and clerk in the secretary of state's office, ten thousand dollars; for contingent fund of the auditor of state, two thousand and five hundred dollars; for the contingent fund of the secretary of state, one thousand dollars; for the payment of the salaries of the judges of the supreme court, judges of the county court of common pleas, judge of the criminal court of Hamilton county, fifty-three thousand dollars; for salaries of the superintendent, physicians, steward and matron of the lunatic asylum, three thousand five hundred dollars; for provisions, household expenses, clothing, servants, fuel, stationery, labor, medicines, and contingent expenses for the lunatic asylum, the sum of twenty-five thousand dollars; and for apparatus and fixtures for warming by steam, accompanied with forced ventilation, ten thousand dollars; for salaries of the superintendent and steward of the asylum for the deaf and dumb, one thousand five hundred dollars; for salaries of the matron and assistants of the asylum for the deaf and dumb, six hundred dollars; for salaries of the teachers and physicians of the asylum for the deaf and dumb, five thousand two hundred and fifty dollars; for provisions, household expenses, clothing, fuel, labor, servants, and contingent expenses of the asylum for the deaf and dumb, six thousand five hundred dollars; for repairs on the asylum for the deaf and dumb, one thousand dollars; for out-houses and repairs on out-

houses, one thousand dollars; for the salaries of the superintendent and steward of asylum for the blind, one thousand five hundred dollars; for salaries of the physician, teachers, matron, assistants, and artizans of the asylum for the blind, four thousand dollars; for clothing, provisions, furniture, labor, servants, stationery, material for workshop, contingencies, for asylum for the blind, six thousand dollars; for out-houses on the premises, five hundred dollars; for state library, one thousand dollars, two-thirds of which sum shall be expended under the direction of the attorney general; for stationery for the state, the sum of twenty thousand dollars; for distribution of the laws, journals and documents, one thousand dollars; for compensation of the adjutant general, three hundred dollars, to be paid on the certificate of the governor; for taking care of the public arms, under the direction of the quartermaster general, to be paid upon the certificate of the governor, a sum not exceeding five hundred dollars; for the purchase of fuel for the general assembly and for the public offices, five hundred dollars; for transportation of convicts to the penitentiary and costs of prosecutions, and for repayment of any amount advanced by the treasurer over former appropriations, the sum of twenty-five thousand dollars; for salaries of warden, physician, directors, guards, deputy-warden, and clerk of the penitentiary, sixteen thousand dollars; for contingent fund of the treasurer of state, one thousand dollars; for contingent fund of the attorney general, five hundred dollars; for compensation to moral instructor for the lunatic asylum, two hundred dollars; for the purpose of enabling the trustees of the lunatic asylum to provide an infirmary for those who require medical treatment in said institution, six thousand dollars; for new roof on the lunatic asylum, two thousand two hundred and eighty-two dollars; for repairing water closets and bath tubs, four thousand dollars.

§ 2. There shall be levied for the current year, upon the grand list of the state, in the manner prescribed by the act entitled "an act for the assessment and taxation of all property in this state, and for levying taxes thereon according to its true value in money," passed April thirteenth, eighteen hundred and fifty-two, and the acts supplemental and amendatory thereto, for general revenue purposes one mill on the dollar valuation, and for canal and sinking fund two mills on the dollar valuation of the property on the grand list.

§ 3. There shall be and hereby is appropriated for the payment of the semi-annual interest on the foreign and domestic debt to become due in July and January next, and for irreducible debt, one million twenty-five thousand five hundred and ninety-seven dollars and forty-nine cents; for the expenses of the commissioners of the sinking fund, and agent of the board of sinking fund commissioners in New York, the sum of five

Blind asylum.

State library.

Stationery.

Distribution of laws.

Adjutant general.

Public arms.

Fuel.

Transportation of convicts, sums advanced by treasurer.

Penitentiary.

Contingent fund of treasurer and attorney general.

Lunatic asylum.

Amount to be levied.

For the state debt.

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|-----------------------------------|---|
| Curwen's statutes. | thousand dollars; for the redemption of outstanding national road stocks, outstanding canal, school and ministerial bonds, faith and credit bonds, (loan of eighteen hundred and forty-two,) Miami extension land bonds, and Ohio turnpike stock, one hundred and seven thousand seventy-one dollars and ninety-three cents; for state subscription for one thousand copies of M. E. Curwin's revised statutes of Ohio, ten thousand five hundred dollars; for superintendence, repairs, and damages on the public works of this state, four hundred thousand dollars; for expenses of Ohio volunteers, allowed by the governor, auditor of state and attorney general, under joint resolution of January twenty-ninth, eighteen hundred and forty-seven, one thousand dollars; for expenses of the state board of equalization, ten thousand dollars; for expenses of the board of trustees of the benevolent institutions, six hundred dollars, to be drawn on the certificate of the committee ad interim of said board; for engraving and furnishing seals and presses for the district courts, furnished and to be furnished by the secretary of state, the further sum of five hundred dollars; for taxes improperly collected and refunded, two thousand dollars; for the payment of over drafts upon the canal and sinking fund for the fiscal year ending November fifteenth, eighteen hundred and fifty-two, two hundred and thirty-three thousand nine hundred and three dollars and three cents, to be applied as follows: for interest on school section sixteen, seventy-three thousand two hundred and ninety-two dollars, seven cents and one mill; for interest on ministerial section twenty-nine, two thousand five hundred dollars, thirty-one cents and nine mills; for interest on Virginia military school fund, eleven thousand nine hundred and twenty-three dollars, nine cents and three mills; for interest on United States military school fund, seven thousand two hundred and thirteen dollars, seventy-three cents and three mills; for interest on Connecticut Western Reserve school fund, nine thousand five hundred and nineteen dollars, fifty three cents and three mills; for interest on Moravian school fund, one hundred and fifty-nine dollars and four cents; for interest on Ohio University fund, one hundred and thirteen dollars, eighty-four cents; for Ohio canal contracts and repairs, four thousand six hundred and ninety dollars and ninety-nine cents; for Ohio canal unrestricted fund, two hundred forty-five dollars and seven cents; for Miami and Erie canal contracts and repairs, ninety-nine thousand nine hundred and forty-six dollars and ninety-six cents; for Muskingum improvement contracts and repairs, eight thousand four hundred and ninety dollars and seventy-four cents; for Hocking canal unrestricted fund, twenty-five dollars; for Walhonding canal contracts and repairs, five hundred and fifty-six dollars and nine-five cents; for Western Reserve and Maumee road contracts and repairs, nine thousand and ninety-seven dollars and one |
| Repairs, &c., Public works. | |
| Ohio volunteers. | |
| Board of equalization. | |
| Trustees benevolent institutions. | |
| Court seals and presses. | |
| Taxes. | |
| Canal & sinking fund. | |

cent; for contingent fund of board of public works, two thousand four hundred and sixty-nine dollars and twelve cents; for exchange for payment of interest for July, 1852, and January, 1853, three thousand six hundred and fifty-nine dollars and fifty-seven cents.

§ 4. For the prosecution of the work upon the new state house, and to defray the necessary expenses of the profitable employment of convict labor thereon, as provided by law, the additional sum of one hundred and twenty-five thousand dollars; out of which shall be paid to the warden of the Ohio penitentiary, forty cents per day for each day's work done since December first, eighteen hundred and fifty-two, on the new state house by the prisoners in the Ohio penitentiary, which shall be paid monthly to the warden aforesaid, on the certificate of the acting commissioner of the new state house, and when received by said warden, shall be applied to the improvements and repairs necessary on the prison shops and hospital.

§ 5. The following sums be and hereby are appropriated for the payment of the claims presented and allowed to the persons and corporations herein named, viz: T. V. Hyde, one hundred and fifty dollars and thirty-eight cents; to Tyler and Buxton, thirty-two dollars and fifty cents; to R. D. Dunbar, six dollars; to J. Westwater & Son, six dollars and twenty cents; to I. G. Dryer & Co., one hundred and thirty-one dollars and sixty-two cents; to John Miller & Co., one hundred and seventy-four dollars and eighty cents; to R. Main, one hundred and thirty-six dollars and sixty-five cents; to John J. Foote, sixty dollars, for one year's storage of state arms; to W. H. Protsman, fifteen dollars; to H. Mason, eleven dollars and eighty-one cents; to M. Halm, four dollars; to Armstrong & Gorton, two dollars and seventy-eight cents; to John Stone & Co., two dollars and twenty cents; to Jacob Schmekemburger, one dollar; to Jacob Lohren, one dollar; to Robert Woodrow, one hundred dollars; to L. L. Rice, twenty-five dollars; to B. W. Leavill, twenty-one dollars; to J. V. Smith, twenty-four dollars and thirty-seven cents; to John Greenleaf, one hundred and twenty-one dollars and sixty cents; to J. Boswell & Son, ten dollars and fifty-six cents; to Siebert & Lilley, the sum of seventeen dollars and fifty cents; to M. C. Lilley, twenty-nine dollars and seventy-five cents; to J. H. Riley & Co., two hundred and seventy-three dollars and thirty-two cents; to John Y. Savage, forty-four dollars and fifty cents; to J. Ridgway & Co., forty-three dollars and sixty-two cents; to Osborn & Stewart, three hundred and seventy-seven dollars and forty-seven cents; to P. Ambos & Co., for use of hall for one year, one thousand dollars; to S. Clark & Co., twenty-eight dollars and eleven cents; to Valentine Sharp, seventeen dollars and fifty cents; to Henry Mack, thirty-four dollars; to Elijah Hayward, forty-six dollars; to Thomas Ken-

State house.

Private claims
&c.

nedy, one hundred and forty-eight dollars and seventy-five cents; to E. Hall, ten dollars and seventy-five cents; to Richard Raridon, seventy-nine dollars; to the Columbus gas-light and coke company, for light for the senate, one hundred and twelve dollars and forty-two cents; for light for the house of representatives, two hundred and fifty-nine dollars and fifty cents; to G. H. Wilson, eleven dollars and sixty-six cents; to E. H. Leland, twenty-five dollars; to W. S. Langdon, six dollars; to Peter Zimmerman, seventy-five cents; to John Taylor, nineteen dollars and forty-five cents; to O. Boughton, the sum of ten dollars; to Robert Neil, for balance on account of rent for the use of the hall, seven hundred and fifty dollars; to George Riordan, crier of the supreme court for the March term, eighteen hundred and fifty-two, and January term, one thousand eight hundred and fifty-three, one hundred and sixty-three dollars and sixty-five cents; for payment of the expenses heretofore incurred in prosecuting the claim of the State of Ohio against the North American Trust and Banking company and others, in the courts of the state of N. Y., including the expenses and taxable costs of counsel and other costs which the State of Ohio has been directed to pay, the sum of twenty-five hundred dollars; for payment of the expenses, fees of counsel and costs to be incurred in the further prosecution or in the settlement of the said claim under the joint resolution adopted this session, the sum of twenty-five hundred dollars; provided, however, that the moneys used or expended for that purpose shall be drawn upon the certificate of the attorney general to be filed in the office of the auditor of state, specifying the object of such use or expenditure, and that the same is necessary in the further prosecution or in the settlement of the claim aforesaid; for the salary of the reporter to the supreme court (to be paid for the year ending the first Monday of March, eighteen hundred and fifty-three,) the sum of five hundred dollars; to Smeltz & Rodolph, the sum of fifty-two dollars and seventy-five cents; to J. H. Riley & Co., the sum of five hundred and ninety-four dollars and eighty-nine cents; to Westwater & Son, the sum of three dollars and thirty-five cents; to Henry Mack, the sum of fifteen dollars; to A. Hardy, the sum of three dollars; to Dwight Stone & Co., the sum of thirty-five dollars and eighty-nine cents; to P. Schoedinger & Co., the sum of three dollars and seventy-five cents; to John Y. Savage, the sum of twenty-two dollars and twenty-five cents; to John L. Bryan, the sum of thirty dollars; to Wesley H. Protsman, the sum of eighty dollars; to Frederick Hincman, the sum of eight dollars; to Kilbourne, Kuhns & Co., the sum of nine dollars and twenty-seven cents; to W. Richards & Co., the sum of thirteen dollars and eighty-eight cents; the sum of fourteen dollars and twenty-five cents shall be paid for witnesses before the standing committee on the penitentiary, to be allowed on

the certificate of the chairman of said committee at the rate of seventy cents per day; to A. C. Brown, the sum of six dollars and thirty-one cents; to Samuel Medary, the sum of two hundred and twenty-two dollars and fifty cents; to John Stone & Co., the sum of four dollars and seventy-seven cents; to Gere & Abbott, the sum of thirteen dollars and seventeen cents; to J. H. Felch, the sum of fifteen dollars and thirty-seven cents; to R. P. Little, the sum of eleven dollars and twenty-five cents; to G. Roberts & Co., the sum of nine dollars and seventy-three cents; to Kilbourn, Kuhns & Co., the sum of thirty dollars and ninety-eight cents; to J. M. McCune & Co., the sum of four dollars and thirty-nine cents; to R. W. Watson, ten dollars and seventy-five cents; W. W. B. Watts, the sum of twelve dollars; to Walter Thrall, the sum of forty dollars; to Thomas Wall, the sum of seventeen dollars and ten cents; to Ambos & Lennox, the sum of one hundred dollars; to W. A. & J. C. McCoy, the sum of two dollars and twenty-five cents; to Denig & Harry, the sum of five dollars and forty-seven cents; to M. Halm, the sum of twenty-two dollars; to R. P. Little, the sum of seven dollars and thirty cents; to Armstrong & Gorton, the sum of three dollars and thirty cents; to Decker & Hibbs, the sum of four dollars; to John J. Robinson, the sum of sixty-three dollars and fifty cents; to A. Tyler, the sum of twenty-six dollars and twenty-three cents; to Jones & Herr, the sum of one dollar and fifty cents; to W. F. Wheeler, the sum of ten dollars; to M. Stevens, for compensation for services as assistant sergeant-at-arms of the senate, the sum of one hundred and eighty-eight dollars.

§ 6. All moneys in the treasury belonging to the sinking fund over and above what is necessary to pay the accruing interest applicable to the payment of the principal of the public debt, not exceeding five hundred thousand dollars, are hereby appropriated to be applied to the redemption of outstanding bonds or investment in the sinking fund, agreeably to the act "to create a sinking fund for the payment of the principal and interest of the public debt of Ohio," passed March fourteenth, eighteen hundred and fifty-three. Sinking fund.

§ 7. That all unexpended balances, sums heretofore appropriated by the general assembly, shall be applied to the same purposes for which they were originally appropriated for the current year. Unexpended balances.

§ 8. That the sum of one thousand dollars of unexpended balance of the sums heretofore appropriated for the governor's contingent fund, the sum of fifteen hundred and ninety-seven dollars and twenty-five cents, the unexpended balance of the sum heretofore appropriated for the payment of postage of the Ohio legislature, the sum of four thousand five hundred and fifty-eight dollars and ninety-six cents, the unexpended balance of the sums heretofore appropriated for the expenses of the Certain sums transferred to general revenue.

constitutional convention, and the sum of two thousand dollars, a part of the unexpended appropriation heretofore made for printing the Ohio reports, be and the same are hereby transferred to the general revenue of the state for the current year.

When money
may be drawn

§ 9. No moneys by this act appropriated shall be drawn from the treasury by any disbursing officer or agent until the same shall be necessary for the purpose to which it is herein directed to be applied, nor shall any of said moneys so appropriated be deposited in any bank or banking institution.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To create a Sinking Fund for the payment of the principal and interest of the Public Debt of Ohio.

Concerning a
sinking fund,
and the man-
ner of apply-
ing the same.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That there shall be, and hereby is created a sinking fund for the payment of the accruing interest of the public debt of Ohio, and the principal of the same, which shall be styled the sinking fund of the State of Ohio; and shall be faithfully applied to the payment of the principal and interest of the public debt, by the "commissioners of the sinking fund," agreeably to the provisions of Article eighth of the Constitution of Ohio, the "Act to define the duties of the commissioners of the sinking fund," passed April nineteenth, eighteen hundred and fifty-two, and of this act; and to no other use or purpose whatsoever.

What moneys
the fund to
consist of.

§ 2. The said sinking fund shall consist of the net annual income of the public works and stocks owned by the state, the proceeds of sales of canal, school and ministerial lands, the principal and proceeds of surplus revenue loans to counties, of any other funds or resources that are or may be provided by law, and of such further sums, to be raised by taxation, as may be provided for the purposes aforesaid.

§ 3. Of the moneys paid into the treasury belonging to the sinking fund, the Auditor of State shall annually set apart as a specific fund for the payment of the principal of the public debt of the state, the following sums: In the year one thousand eight hundred and fifty-three, one hundred thousand dollars; in the year one thousand eight hundred and fifty-four, one hundred and six thousand dollars, and so increasing yearly, and each and every year, by compounding at the rate of six per cent. per annum until the reimbursable debt of the State be fully paid, which fund shall be applied or invested as provided in the succeeding sections of this act.

Specific fund set apart for payment of public debt.

§ 4. The amounts set apart under the provisions of the preceding section, together with all other moneys applicable to that object, shall be applied, by the commissioners of the sinking fund, to the payment of the funded debt of the State, and shall not be diverted from that object to any other use or purpose whatsoever; and all bonds so paid shall be cancelled by the acting commissioner of the sinking fund and filed with the Auditor of State, who shall give said commissioner a receipt therefor; and their proceedings therein shall be reported to the General Assembly at each session thereof, and oftener if required.

Fund set apart applied exclusively to pay the public debt.

Sinking fund commissioners to report to General Assembly.

§ 5. The commissioners of the sinking fund shall not renew the bonds, or extend the time of payment of any portion of the funded debt of the State, in any manner that will prevent the application of the sums contemplated to be raised by the provisions of this act, to the payment of the same.

Commissioners not to renew bonds.

§ 6. That whenever an amount of money, applicable to the payment of [the] principal of the public debt of the State, shall have accumulated in the treasury equal to or exceeding the sum of ten thousand dollars, in addition to the amount necessary to pay the accruing interest for the year, it shall be the duty of the commissioners of the sinking fund to immediately apply such moneys to the redemption of so much of the outstanding bonds of the State; Provided they can be obtained at their par value; and if not, then said commissioners shall, as in their opinion will best subserve the interest of the State, apply them to the purchasing of outstanding bonds of the State of Ohio, at the market price thereof, provided it does exceed six per cent. premium, or invest said moneys in stocks of the United States, bearing a rate of interest not less than five per cent. per annum; and in case they invest said moneys, or any part thereof in stocks of the United States, said stocks shall be deposited with the Auditor of State, and by him safely kept until outstanding bonds of the State shall become due, or can be purchased upon such terms as it will be to the interest of the State to convert said United Stocks into money, for the purpose of purchasing or redeeming outstanding bonds of the State, at which time

Commissioners to redeem outstanding bonds of the State.

Proviso.

When commissioners to report to Governor.

Auditor of State to draw his warrant upon requisition of commissioners.

Railroad shares of stock held by the State, how disposed of.

Proviso.

Money received for railroad stock, how applied.

Repealing clause.

said United States stocks shall be sold, and the proceeds thereof applied to the redemption or purchase of said outstanding bonds, and to no other use or purpose whatever; and a full and detailed statement of their proceedings therein, shall be reported to the General Assembly at each session thereof; and in any year in which there is no session of the General Assembly, then said report shall be made to the Governor, who shall cause the same to be published.

§ 7. Whenever any of the bonds of this State shall be redeemed in pursuance of the preceding sections of this act, the commissioners of the sinking fund shall make a requisition upon the Auditor of State for an amount sufficient to pay the bonds presented for redemption; if said commissioners shall determine to invest any moneys in stocks of the United States, then a like requisition shall be made for an amount equal to the proposed investment; and for either purpose, the Auditor of State shall, in pursuance of a requisition, draw his warrant in favor of the holder or holders of said bonds so presented for redemption or in favor of any person or persons from whom stocks of the United States may be purchased, and the same shall be paid by the Treasurer of State.

§ 8. The sinking fund commissioners are hereby authorized, and whenever an opportunity occurs, they are directed to exchange for certificates of the six per cent. stocks of the funded debt of this State, or to sell, or otherwise dispose of, for money, any and all of the shares of stock held by the State in any of the railroads of this State; Provided that such shares of stock shall in no case be sold or otherwise disposed of except upon cash payment therefor, or if exchanged for certificates of the six per cent. stocks aforesaid, the amount of such certificates of stock shall at least be equal to the amount of railroad shares of stock exchanged therefor; and in no case shall any such shares be sold, exchanged, or otherwise disposed of at less than the par value of the same.

§ 9. The sinking fund commissioners are hereby further directed, in case such railroad shares of stock are sold or otherwise disposed of, for money, to apply the money thus received to the sinking fund, to be disposed of in the redemption of outstanding bonds of the State, or the purchase of United States stocks, as prescribed in section six of this act, for the application of other moneys belonging to the sinking fund.

§ 10. The act entitled "An act to provide for the extinguishment of the public debt of Ohio," passed February twenty-fourth, one thousand eight hundred and forty-eight, be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,

President of the Senate, pro tempore.

March 14, 1853.

AN ACT

Declaring the effect of assignments to Trustees, in contemplation of Insolvency.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That all assignments of property in trust, which shall be made by debtors to trustees in contemplation of insolvency, with the design to prefer one or more creditors, to the exclusion of others, shall be held to enure to the benefit of all the creditors, in proportion to their respective demands, and such trusts shall be subject to the control of the courts, which may require security of the trustees for the faithful execution of the trusts, or remove them and appoint others, as justice may require.

Assignment in contemplation of insolvency, inure to benefit of all the creditors.

§ 2. That this act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To repeal the act fixing the time of holding the District Courts and Courts of Common Pleas, passed January 23, 1852, and February 18, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the act entitled "An act fixing and providing for the terms of the district courts of the State of Ohio," passed January 23, 1852, and the act entitled "An act to fix and provide for the terms of the courts of common pleas of the State of Ohio," passed February 18, 1852, be and the same are hereby repealed.

40 O. L. page 71 and page 75 same vol. repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate, pro tempore.

March 15, 1853.

AN ACT

Explanatory of the act to repeal the fifty-seventh section of an act directing the mode of proceeding in chancery, passed March 14, 1831, and to direct the manner of, and terms upon which decrees may be opened in causes where the same have been rendered against parties without actual notice.

Whereas, the second section of the act, passed March 24, 1852, entitled "An act to repeal the fifty-seventh section of an act directing the mode of proceeding in chancery," passed March 14th, 1831, and to direct the manner and terms upon which decrees may be opened in causes where the same have been rendered against parties without actual notice, was intended to repeal section fifty-seven in the act aforesaid, as designated by figures in Swan's Collated Statutes; and whereas doubts exist as to whether the said second section may not be construed as repealing the fifty-seventh section aforesaid, as numbered by letters in said collated Statutes; Therefore,

Swan's Stat.
§ "57," p. 717,
repealed.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That said section shall be taken and held as repealing the fifty-seventh section of the act aforesaid as designated by the figures "57" in said collated statutes.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

To provide for the repair of roads when abandoned by incorporated companies.

Concerning
repairs of
roads and mu-
nicipal corpo-
rations.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any turnpike or plank road company shall fail to keep any portion of its road within the limits of any muni-

cipal corporation of this State, in repair for five days successively, it shall be lawful for the proper authority of any such municipal corporation to pass a resolution requiring such company to repair the same in ten days after the service of a copy of said resolution on the gate-keeper nearest such municipal corporation, and it shall be the duty of the company to declare their intention to abandon or repair the same; and in case of a failure or refusal so to do, within thirty days, or in case of a failure or refusal to repair in ninety days, such municipal corporation may file a complaint in writing with a copy of said resolution in the court of common pleas of the county describing the portion of the road required to be repaired; and it shall be the duty of the court or any judge thereof to appoint two disinterested persons as inspectors, who shall view the portion of the road complained of and return their finding thereon, under oath, to said court within ten days; and if they shall find the complaint to be true, such portion of the road shall be declared abandoned by the company, and it shall be lawful for the municipal corporation to improve or repair the same, and to assess and collect a charge on the owners of any lots or land or on the lots or lands bounding and abutting on such portion of such road in the same way as is provided by law in relation to the improvement of streets.

Proceedings when company refuse to repair.

When road declared abandoned.

§ 2. Notice of the complaint and of the appointment and time of meeting of the inspectors shall be served on the president or other officer of the company or at its principal office, five days before the meeting of said inspectors; and if such service be made by any person other than the sheriff, it shall be verified by the oath or affirmation of the person making the same. No toll shall be received at the gates for the portion of the road so declared abandoned; and if the keeper of any gate shall demand and receive toll for the same, he shall be liable to pay the sum of five dollars to the party injured, to be recovered by a civil action before any justice of the peace having jurisdiction. The costs of the proceeding on the complaint shall be paid by the company if the action be sustained; if not, by the municipal corporation, and execution shall issue therefor as in other cases.

Notice to the company, how made, &c.

No toll to be received for abandoned road.

How costs paid.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

For the relief of the poor.

Legal settle-
ments how ac-
quired in
townships of
this State.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That any person or persons, other than those hereinafter provided for, residing one year in any township in this State, without being warned by the trustees of said township to depart the same, or three years after being so warned without being again warned as aforesaid, shall be considered as having gained a legal settlement in such township. Every indented servant, or apprentice, legally brought into this State, shall obtain a legal settlement in the township where such servant or apprentice, first served his or her master or mistress three years, and every married woman, during coverture and after her husband's death, shall be considered legally settled in the place where he was last legally settled; but if he shall have, or shall have had, no legal settlement, then she shall be considered as settled in the place where she was last legally settled before marriage.

As to the set-
tlement of col-
ored persons.

§ 2. That nothing in this act shall be so construed as to enable any black or mulatto person to gain a legal settlement in this State. Provided that nothing in this section shall be so construed as to prevent the directors of any county or city infirmary in their discretion from admitting any black or mulatto person into said infirmary.

Who the trus-
tees shall
warn to depart

§ 3. That the trustees, upon receiving information that any person has come within the limit of their township to reside, who will be likely to become a township charge, shall issue their warrant or order to any constable of the township, commanding such constable to warn such person forthwith to depart the township, by reading such warrant or order of the trustees of the township, in his or her presence and hearing, or by leaving an attested copy at his or her last place of residence, and it shall be the duty of such constable reading such warrant or order, to make immediate service thereof, in manner above directed, and to certify on the back of such warrant, that he read the same in the presence or hearing of the person therein named, or left an attested copy thereof at his or her last place of residence, as the case may be, which warrant the said constable shall immediately lodge with the clerk of the township, who shall record the same, and the certificate of the constable endorsed thereon, within three days thereafter, in the book containing the records of the township.

§ 4. That upon complaint being made, or information given, to the trustees of a township in any county having a county poor house, that any inhabitant of such township, having a legal settlement therein, is in a suffering condition and requires public assistance, or support, said trustees shall inquire into the condition and necessities of such person, and if satisfied that such person ought to be relieved at public expense, they shall make out an order to the directors of the poor house, to receive and provide for such person, and shall accompany said order with the statement required by the act to authorize the establishment of poor houses.

Trustees to order the directors of the poor house to receive suffering poor.

§ 5. That when the trustees of any township in any county having no county infirmary, shall be satisfied that any person in such township is in a suffering condition, and ought to be relieved at the expense of such township, they shall afford such relief, at the expense of their township, as in their opinion the necessities of such person may require. And when more than temporary relief is required, the trustees shall set up a notification in three public place in their township, specifying some time and place, at which they will attend for the purpose of receiving proposals for the maintenance of such person, which notification shall be posted up at least seven days before the day named therein for receiving such proposals. And said trustees may contract with such person as they shall think suitable to take charge of, and maintain such person, and who shall do the same on the most reasonable terms; but they shall not contract for the support of such person for a longer period, than one year, at any one time.

Trustees may contract for the support of the poor.

§ 6. That upon complaint being made or information given to the trustees of any township in any county, or to the directors of the poor house or infirmary for the accommodation of any city in this State, that any person residing in such township or city, is in a condition that requires public assistance or support, said trustees or directors shall enquire into the condition and necessities of such person, and if satisfied that relief ought to be granted at the public expense, and that such person requires temporary or partial relief only, and that for any cause it would be inexpedient to remove such person to the county or city poor house or infirmary, such trustees or directors may, in their discretion, afford such relief, at the expense of their township or city, without removing such person to the county or city infirmary, and it is hereby made the duty of such trustees to provide for all persons who may, upon application, be rejected by the directors of the county infirmary under the provisions of the ninth section of the act authorizing the establishing of poor houses, whether such person or persons may require permanent, temporary or partial relief, in the same manner and to the same extent as is required of trustees of townships in the last preceding section of this act.

Discretion of the trustees in affording temporary relief.

Counties to re-imburse townships for relief afforded to persons not having a legal settlement.

Proviso.

Paupers to be removed to place of legal settlement.

The township where they belong shall pay for their support and removal.

Persons may be removed to States where they have a legal settlement.

Trustees to keep account of all expenses incurred.

§ 7. That the trustees of each township shall also afford relief or support to any person within their township and not having a legal settlement in the same, when such relief or support is needed. Provided that whenever the trustees of any township shall be called upon to afford relief from the township treasury, to any person or persons who have no legal settlement in this State, or whose place of residence is unknown, it shall be the duty of such trustees to keep an accurate account of all moneys so expended, and certify such account together with the vouchers for the same, to the county commissioners of the county, who shall cause the amount so paid to be paid the township out of the county treasury; provided further, that in case any person or persons, becoming chargeable to any township, as aforesaid, shall have no legal settlement within this State, the trustees may remove such person or persons to the State where he, she or they have a legal settlement unless such person or persons shall give sufficient security to indemnify the said township.

§ 8. That if any person or persons shall become chargeable in any township in which he, she, or they have not gained a legal settlement, it shall be the duty of the trustees of such township to cause such person or persons, so soon as the state of his, her, or their health will permit, to be removed to the township where he, she, or they were last legally settled, if such person or persons have any legal settlement in this State. And the trustees of such township shall receive such pauper or paupers thus removed, and provide for his, her, or their maintenance in the manner prescribed by this act. And the township in which such pauper or paupers have gained a legal settlement, and to which he, she, or they are transported, shall pay to the said trustees of the township which have thus supported and removed said pauper or paupers, all reasonable charges for such support and removal, and upon refusal, may be compelled by a civil action brought against the trustees of said township, before the probate court or court of common pleas of the county in which either or both of the townships may be situated, and the trustees of each and every township in this State are hereby empowered, to sustain said action against the trustees of any other township in this State, for thus supporting and removing their own paupers.

§ 9. That in case any person or persons becoming chargeable to any township, as aforesaid, shall have no legal settlement within this State, the trustees may remove such person or persons to the State where he, she, or they have a legal settlement, unless such person or persons shall give sufficient security to indemnify the said township.

§ 10. That the trustees shall keep fair and accurate accounts of all expenses incurred for the support of the poor within their respective townships, and make entries in a book of

the names of the poor and the time when each of them became chargeable, together with an account of their own services rendered; which account shall be adjusted and settled on the first Monday of March, annually, and the township clerk shall record the same in the township records, and issue an order on the township treasury for the amount thus paid and their services rendered, and the trustees in each and every township shall issue orders on the township treasurer for any and all such demands as may accrue under the provisions of this act.

§ 11. That all gifts, grants, devises, and bequests, that now are, or hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, to the poor of any township, by deed, gift, or by the last will and testament of any person or persons, or otherwise, shall be good and valid in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to the trustees of such township, and their successors in office, for the use of their poor, respectively, under such regulations as shall from time to time be made by law.

Trustees may receive bequests of lands and goods for use of the poor.

§ 12. That the act entitled "an act for the relief of the poor," passed March fourteenth, one thousand eight hundred and thirty one, and the amendatory act thereto, passed March eight, one thousand eight hundred and fifty, be and they are hereby repealed; provided that all rights which have accrued, and all suits and proceedings now pending under the provisions of said acts repealed, shall be prosecuted and determined agreeably to and under the provisions of said acts, and all judgments which have been heretofore recovered, or which hereafter may be recovered, under the provisions of said acts, shall be carried into execution under the provisions of the acts hereby repealed.

Acts repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To regulate the fees of Probate Judges, and to repeal the nineteenth section of the act entitled "An act defining the jurisdiction and regulating the practice of Probate Courts," passed February 25, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That each probate judge in this State shall receive for services rendered, the fees prescribed in section two of this act, and no more.

Items of fees of probate judges.

§ 2. For docketing each cause to be charged but once, six cents; for entering the appearance of the parties, to be charged but once, sixteen cents in each case; for taking affidavit, twelve cents; for issuing summons or other writs under seal, twenty-five cents each; for entering order to advertise, twenty-five cents; for filing petition, answer, or any other paper, necessary to complete the pleadings in any cause, six cents; and for all other papers, except the accounts current and vouchers of executors, administrators and guardians, four cents each; for entering the return of any writ, six cents; for issuing a subpoena, where there is but one witness named, twelve cents; and for every additional name, four cents; for swearing each witness, four cents; for entering attendance of each witness, six cents; for indexing each cause, ten cents; for entering judgment on journal, ten cents; for recording general verdict, ten cents; for entering order on journal, ten cents for each one hundred words; for transcribing judgment or orders on the docket, ten cents; for entering satisfaction of judgment or decree on record, twelve cents; for entering every special rule, six cents; for entering every continuance, discontinuance, or retraxit, ten cents; for entering a rule of reference, twelve cents; and for giving a copy thereof, under seal, twenty-five cents; for entering notice of appeal, ten cents; for drawing cost bill, thirty-five cents, which shall be taxed but once in each case; for making up a complete record in each cause, ten cents, for each one hundred words such record may contain; for making out copies of records, or any proceedings in a cause, when required by either party or the law, with the seal annexed, ten cents for each one hundred words; for entering allowance of an injunction, certiorari or habeas corpus, ten cents; for issuing execution, thirty-five cents; for docketing each execution issued, ten cents; for issuing orders of sale thirty-five cents each; and ten cents for each one hundred words said writ may contain over the first hundred; for recording returns on writs of execution and orders of sale, ten cents for each one hundred words; for each certificate to which the seal of the court is required, and not herein provided for, fifty cents; for probate of will and entry thereof, thirty-five cents; for issuing letters testamentary or letters of administration, or guardianship, under seal of court, one dollar; for taking bond of executors, administrators or guardians, forty cents; for recording a bond, will, inventory, sale bill or settlement of executors, administrators or guardians, ten cents for every one hundred words; for making out copies of wills, inventories, sale bill, settlements or rules of court, ordered or to be furnished by executors, administrators and guardians, ten cents for each one hundred words; for entering the appointment of executors, administrators, guardians or appraisers of property, twelve and a half cents; for copy of order

to appraisers, twelve and a half cents; for filing an account current and vouchers of an executor, administrator or guardian for settlement, and entering the same on the minutes of the court, twenty-five cents; for entering order of settlement of same, fifteen cents; for examining partial or final settlements of guardians, executors or administrators, one dollar each, where there are not more than fifty vouchers to be examined, and if any account shall contain more than fifty vouchers, the sum of two cents for each additional voucher so examined; for issuing citation to executors, administrators or guardians, thirty-five cents; for administering an oath when necessary, and issuing a marriage license, and filing and recording the certificate of marriage, seventy-five cents; for giving notice of time of settlement, ten cents; for hearing applications on behalf of lunatics and idiots, two dollars; for hearing applications for the right of way for railroads, plank roads and turnpikes, three dollars per day; for hearing and deciding applications in contested cases on petitions of administrators, executors and guardians, to sell land, and petitions to convey, one dollar, to be taxed in each or the above cases in the bill of costs; for holding examining courts, two dollars per day; and for hearing and determining applications on habeas corpus in criminal cases, two dollars, to be paid out of the county treasury; for hearing and determining applications for habeas corpus in civil cases two dollars; and for hearing and determining applications in contested cases, two dollars, to be taxed in the bill of costs against the unsuccessful party.

§ 3. For any other services not herein provided for, the same fees shall be allowed as for similar services in the court of common pleas; Provided that no probate judge shall charge or be allowed any compensation for preparing or making out the account of any executor, administrator or guardian for settlement.

For other services, same fees as in common pleas.

§ 4. That the costs in all criminal proceedings taxed in pursuance of the provisions of this act, and adjudged in favor of the State, shall, when collected by the probate judge, be paid by him into the county treasury.

Cost to be taxed as in criminal cases.

§ 5. The nineteenth section of the act entitled "An act defining the jurisdiction, and regulating the practice of probate courts," passed February twenty-fifth, eighteen and fifty-two, be, and the same is hereby repealed.

50 O. L. page 80, § 19 repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To extend the jurisdiction of the Criminal Court of Hamilton County.

Jurisdiction
of the crimi-
nal court of
Hamilton
county, in
case of forfeit-
ed recognizances.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all actions or proceedings for the recovery of the amount of any forfeited recognizances sent to or taken in the criminal court of Hamilton county, said criminal court shall have concurrent jurisdiction with the court of common pleas, and shall be governed by the same mode of procedure that is now or may be prescribed for said court of common pleas in such cases.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To amend the fiftieth section of the act entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon, according to its true value in money," passed April 13, A. D. 1852.

Duties of
county audit-
ors in relation
to taxes and
taxable prop-
erty.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the fiftieth section of the act entitled "An act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 13, A. D. 1852, be so amended as to read as follows:

§ 50. Each county auditor shall make out and transmit to the Auditor of State, before the first day of September annually, a statement of the aggregate value of the taxable property in his county, and of the total amount of taxes for all purposes assessed thereon for that year, and he shall make out and transmit by mail to the Auditor of State, on or before the first day of October in every year, a complete abstract of the

duplicate of his county; he shall also at the same time make out and transmit to the Auditor of State an abstract of the number and value of each of the enumerated articles, the value of merchants' and manufacturers' stock, and the value of all other personal property, moneys, credits, investments in bonds, stocks, joint stock companies, or otherwise, and the value of all other articles of personal property as returned by the township assessors, or as fixed by the county board of equalization; said abstracts shall be made out in such form as the Auditor of State shall prescribe, and shall also make out and transmit to the Auditor of State, before the fourth Monday of October, one thousand eight hundred and fifty-four, and every sixth year thereafter, a complete copy of the grand list of real property of each county as it shall stand upon the duplicate of that year.

§ 2. That original section fifty of the act to which this is amendatory be and the same is hereby repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.

GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To amend "an act relating to the organization of courts of justice and their powers and duties," passed February 19, 1852.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the supreme court, when in session, shall have power, in addition to the original jurisdiction conferred by section two, article four of the constitution, on good cause shown, to issue writs of error and certiorari in criminal cases, and supersedeas in any case, and all other writs not specially provided for nor prohibited by statute, which may be necessary to enforce the due administration of justice throughout the State; and either of the judges of the supreme court in vacation shall, on good cause shown, have power to grant said writs of error and certiorari, and also to grant writs of habeas corpus and supersedeas in any case, and such writs of error or certiorari directed to the court of common pleas, may, in the discretion

What writs
supreme court
and judges
thereof may
issue.

of the supreme court or judge allowing the same, be made returnable to the district court of the proper county or to the supreme court.

What writs district court may issue, and appellate jurisdiction of said court.

§ 2. The district court, in addition to the original jurisdiction conferred upon it by article four, section six, of the constitution, shall have power, on good cause shown, to issue writs of error and certiorari in criminal cases, and supersedeas in any case, and all other writs not specially provided for nor prohibited by statute, whenever they may be necessary for the exercise of its jurisdiction in the due administration of justice; and the said district court shall have appellate jurisdiction under such regulations as may be prescribed by law from the court of common pleas in all civil cases in which the court of common pleas has original jurisdiction.

When district court may try cause out of proper county.

§ 3. Whenever from any cause, the district court shall fail to be held in any county at the time prescribed by law, the court may take cognizance of any action pending therein if the parties agree, in any other county of the district, as is usual in cases taken under advisement, and certify their decision back to the proper county for entry and record.

Power of supreme and district courts to remand decrees, &c.

§ 4. The supreme court or district court shall have power to remand its final decrees, judgments or orders in cases removed before them on appeal, to the court below, as the case may require, for the specific or general execution thereof, and may also remand causes which so come before them to the inferior courts for further proceedings therein.

Jurisdiction of common pleas

§ 5. The court of common pleas shall have original jurisdiction in all civil cases, where the sum or matter in dispute exceeds the jurisdiction of justices of the peace and appellate jurisdiction from the decisions of county commissioners, justices of the peace, and other inferior courts in the proper county, in all civil cases, subject to the regulations provided by law. It shall have original jurisdiction of all crimes and offences, except in cases of minor offences, the exclusive jurisdiction of which is possessed by justices of the peace or that may be vested in courts inferior to the common pleas, and shall have the same power to issue remedial and other process, (quo warranto and mandamus excepted,) as the district court has.

Process, &c., authorized, when constitution took effect may still be had.

§ 6. All process and remedies authorized by the laws of this State, when the present constitution took effect, not hereinbefore provided for, may be had and resorted to in the courts of the proper jurisdiction, under the present constitution; and all the laws regulating the practice of, and imposing duties on, or granting powers to the supreme court or any judge thereof, and the courts of common pleas or any judge thereof, respectively, under the former constitution in regard to matters not hereinbefore provided for, except as to matters of probate ju-

jurisdiction, in force when the present constitution took effect, shall govern the practice of and impose like duties upon the district courts and courts of common pleas, and the judges thereof, respectively, created by the present constitution, so far as such process, remedies and laws shall be applicable to said courts respectively, and to the judges thereof, and not inconsistent with the act entitled "an act to establish a code of civil procedure," nor with laws passed since the present constitution took effect, and which laws are still in force.

§ 7. Whenever in any suit in court now pending, or which may hereafter be instituted, it shall manifestly appear to the court that any person who is party to such suit is an idiot, lunatic or insane person, but for whom no guardian appointed by legal authority is acting, or in case there be a guardian of such person who has an adverse interest, it shall be the duty of the court before proceeding further in the suit, to appoint forthwith some suitable person to appear as trustee in such suit for such idiot, lunatic or insane person, and in his name, and on his behalf, to prosecute or defend such suit, as the case may be; and in case the idiocy, lunacy or insanity of such person be not manifest to the court, it shall be the duty of the court before proceeding further in the suit, on the suggestion of the idiocy, lunacy or insanity of such party, upon probable cause, to direct an issue upon the fact, and forthwith to empanel a jury to try and determine the question, and in case of a verdict finding such party idiot, lunatic or insane, the court shall forthwith appoint the trustee to appear in such suit for such party as aforesaid.

Duty of court as to appointing trustee for idiot, &c.

§ 8. In all cases where a party to a suit shall be an idiot, lunatic or insane person, and shall appear by his or her guardian or trustee, it shall be the duty of the court to require a faithful performance of duty on the part of such guardian or trustee in the prosecution or defence of such suit, and in default thereof to remove such guardian or trustee and appoint another person for the purpose of the prosecution or defence of the same, and for the faithful performance of such duty by such guardian or trustee, the court may allow such compensation as may be adjudged reasonable to be taxed against such idiot, lunatic or insane person, in the costs of the suit.

Duty of court where such trustee or guardian has already been appointed.

§ 9. Sections four, thirteen and fifteen, of an "act relating to the organization of courts of justice and their powers and duties," passed February 19, 1852, and section one of "an act further prescribing the powers and duties of the courts of this State and the judges thereof, and to repeal the eighteenth section of the act 'relating to the organization of courts of justice and their powers and duties,'" passed April 30, 1852, are hereby repealed.

50 O. L., page 67, § 4, 13 & 15, and page 102, § 1, repealed.

Time of taking effect.

§ 10. This act shall take effect on the first day of July, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To enforce the collection of taxes which now are, or may hereafter be due from banks and other corporations, from bankers, brokers, and stock-jobbers, and from the agents of foreign corporations, and to protect county treasurers and other officers charged with the collection of the public revenue in the performance of their duties.

Treasurer to demand taxes of banks &c.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all cases where the taxes, or any part thereof, assessed upon the personal property, moneys, credits, or effects of any bank, or banking, or other incorporated company, or association, or any banker, broker, or stock-jobber, or partnership, or company of bankers, brokers, or stock-jobbers, or any agent of an insurance, or other company incorporated by the laws of some other state, or government, under the provisions of the act, "for the assessment and taxation of all property in this state, and for levying taxes thereon according to its true value in money," passed the thirteenth day of April, in the year eighteen hundred and fifty-two, are now unpaid, or shall hereafter remain unpaid till the twenty-first day of December, in any year, the treasurer of the county, wherein such taxes have been, or may be assessed, shall forthwith demand payment of the amount of such taxes, and five per centum penalty thereon, (which said penalty shall be for the use of the treasurer) by leaving a written notice at the banking house, office, agency, or place of business of such bank, or banking, or other incorporated company, or association, or of such banker, broker, or stock-jobber, or partnership, or company of bankers, brokers, or stock-jobbers, or at the office, agency, or place of business of such agent of an insurance, or other company incorporated by the laws of some other state or government. And if the taxes and penalty aforesaid, or any part thereof, shall remain unpaid, for the space of five days from and after the

How demand made.

Duty of treasurer if taxes not paid.

delivery of such notice, the treasurer shall proceed to the banking house, office, agency, or place of business of such bank, or banking, or other incorporated company or association, or of such banker, broker, or stock-jobber, or partnership, or company of bankers, brokers, or stock-jobbers, or to the office, agency, or place of business of the agent of an insurance or other company incorporated by the laws of some other state, or government, and there distrain and seize whatever gold, silver, or copper coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, the property of such bank, or banking, or other incorporated company or association, or of such banker, broker, or stock-jobber, or partnership, or company of bankers, brokers, or stock-jobbers, or of any partner or member thereof, or of such agent of an insurance or other company, incorporated by the laws of some other state, or government, or of the company itself, as may be sufficient to pay the taxes and penalty, so as aforesaid demanded, together with five per centum poundage, (which said poundage shall be for the use of the treasurer) and all the costs and expenses of such distress and seizure, and of any sale which may thereafter become requisite.

To seize coin,
&c.

§ 2. That the treasurer shall forthwith remove the coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so distrained and seized, to his own office or to some place of safe-keeping and deposit, and after making an inventory thereof (a copy of which he shall file in the office of the county auditor,) shall advertise that he will sell, at public vendue, the bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so distrained and seized, at the door of the court house of his county, on the tenth day after such advertisement, which advertisement shall be by one publication in some newspaper printed in the said county, or by a placard upon the door of the court house aforesaid. But if the amount of the taxes and penalty, so as aforesaid demanded, together with five per centum poundage, and all the costs and expenses incurred, be tendered, in gold or silver coin, to the treasurer, at any time before the day of sale, he shall immediately, on demand, surrender the coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so as aforesaid distrained and seized, to the person or persons authorized to receive the same, and take the receipt of such person or persons, in duplicate, therefor: one copy of which receipt he shall forthwith file in the county auditor's office. But if no such tender be made, before the day of sale, the treasurer shall proceed to sell, publicly, to the highest bidder or bidders, the said bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, or so much thereof as, with the coin distrained and seized, will pay

To remove the
coin, &c., to a
safe place.

Notice of sale.

If tax paid,
coin, &c., sur-
rendered.

If taxes, &c..
not paid, bull-
ion, &c., to be
sold.

the taxes, penalty, poundage, costs, and expenses, at the door of the court house of his county, demanding and receiving for payment, at such sale, only the gold, silver, and copper coins of the United States, and such gold and silver coins of foreign states, or countries, as by some act of the Congress of the United States, or proclamation of the President, are then lawful and current. And the treasurer shall pay to the person or persons thereto entitled, on demand, the excess (if any) of the purchase money, at such sale, over and above the residue of the taxes, penalty, poundage, costs, and expenses aforesaid; but shall retain for distribution, according to law, the amount of the taxes, collected by him, whether by distress and sale or by distress alone.

Coin, &c., may be seized at any place within the county.

§ 3. That if the treasurer should not find sufficient gold, silver, or copper coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, to pay the amount of the taxes and penalty demanded, together with five per centum poundage, and all the costs and expenses of distress and seizure, in the banking house, office, agency, or place of business of any such bank or banking or other incorporated company or association, or of any such banker, broker, or stock-jobber, or partnership or company of bankers, brokers, or stock-jobbers, or in the office, agency, or place of business of any such agent of an insurance or other company incorporated by the laws of some other state or government, he is hereby authorized and required also to distrain, seize, and remove whatsoever coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, of such bank or banking or other incorporated company or association, or of such banker, broker, stock-jobber, or partnership or company of bankers, brokers, or stock-jobbers, or of any partner or member thereof, or of such agent of an insurance or other company incorporated by the laws of some other state or government, or of the company itself, he may or can find any where, within his county, in whose possession or control soever, or in what place soever, the same may be. And in case any coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, be taken out of his county, into any other county of this state, for the purpose of evading such distress and seizure, (or so that the same cannot be made in the county where the taxes were assessed,) the treasurer may and shall pursue the said coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, into any county or counties of this state, and distrain and seize the same wherever found, and remove the same to his own county for ulterior proceedings as hereinbefore directed.

Or may be pursued in any other county.

Report of county treasurer.

§ 4. That each county treasurer shall report to the Auditor of State, on or before the first day of April next, and

thereafter on or before the twenty-sixth day of December annually, the amount of taxes charged, or which may hereafter be charged upon the duplicate of his county, against any corporation, company or association, authorized to loan or invest its capital stock, or any part thereof, upon or in bonds, notes, bills, or other obligations bearing interest, and secured by deed, mortgage, or other incumbrance of real estate, in two or more counties of this State, and which taxes, or any part thereof, then remain, or may thereafter remain unpaid. And the Auditor of State shall, after ascertaining the aggregate amount of all such taxes due by any corporation, company or association as aforesaid, appoint, (by warrant under his hand,) some suitable person as commissioner, to proceed forthwith to the principal office, agency or place of business within this State, of such corporation, company or association, and demand payment of the whole amount of such taxes, and five *per centum* penalty thereon, (which said penalty shall be for the use of the county treasurers, and in proportion to the amount of the taxes charged upon their respective duplicates,) by leaving a written notice at the principal office, agency, or place of business, within this State, of such corporation, company, or association. And if the taxes and penalty aforesaid, or any part thereof, shall remain unpaid, for the space of five days from and after the delivery of such notice, the commissioners shall distrain and seize whatever gold, silver, or copper coin, bullion, bank bills, promissory notes, bills of exchange or other securities, or goods or chattels, the property of such corporation, company or association, may be sufficient to pay the taxes and penalty so as aforesaid demanded, together with five *per centum* poundage, (which said poundage shall be for the use of the commissioner,) and all the costs and expenses of such distress and seizure, and of any sale which may thereafter become requisite.

State auditor
to appoint
commissioner,

who shall
make demand.

Power of com-
missioner to
seize coin, &c.

§ 5. That the said commissioners shall forthwith remove the coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so distrained and seized, to some place of safe-keeping and deposit, and after making an inventory thereof, (a copy of which he shall file in the office of the Auditor of State,) shall advertise that he will sell at public vendue, the bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so distrained and seized, at the door of the court house of the county wherein the principal office, agency, or place of business of such corporation, company, or association is situate, on the tenth day after such advertisement, which advertisement shall be by one publication in some newspaper printed in the said county, or by a placard

Commissioner
to remove
coin, &c., to
safe place,
and advertise
for sale.

If tax, &c.,
tendered,
coin, &c., sur-
rendered.

Otherwise -
bullion, &c.,
sold.

Commissioner
to pay over
excess

State auditor's
distribution to
counties.

Commission-
er's oath and
bond.

upon the door of the court house aforesaid. But if the amount of the taxes and penalty, so as aforesaid demanded, together with five per centum poundage, and all the costs and expenses incurred, be tendered, in gold or silver coin, to the said commissioner, at any time before the day of sale, he shall immediately, on demand, surrender the coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, so as aforesaid distrained and seized, to the person or persons authorized to receive the same, and take the receipt of such person or persons, in duplicate, therefor, one copy of which receipt he shall forthwith file in the office of the Auditor of State. But if no such tender be made before the day of sale, the commissioner shall proceed to sell, publicly, to the highest bidder or bidders, the bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, or so much thereof as with the coin distrained and seized, will pay the taxes, penalty, poundage, costs and expenses, at the door of the court house of the county aforesaid, demanding and receiving for payment, at such sale, only the gold, silver and copper coins of the United States and such gold and silver coins of foreign states, or countries, as by some act of the Congress of the United States, or proclamation of the President, are then lawful and current. And the commissioner shall pay to the person or persons thereto entitled, on demand, the excess, (if any,) of the purchase money, at such sale, over and above the residue of the taxes, penalty, poundage, costs and expenses aforesaid; but shall forthwith thereafter pay to the Treasurer of State, (upon the order or certificate of the Auditor of State) the amount of the taxes collected by him, the said commissioner, whether by distress and sale or by distress alone. And the Auditor of State shall cause to be distributed and paid, to the treasurers of the respective counties, the proportions of the said taxes charged upon their duplicates, for county, school, township, municipal, and other local purposes, and the penalty thereon to which the said treasurers may be entitled.

§ 6. That each commissioner appointed as aforesaid, shall, before executing any authority under this act, take and subscribe an oath or affirmation, to support the constitution of the United States and the constitution of the State of Ohio, and well, faithfully and diligently to discharge the duties of his said appointment, and shall give bond to the State of Ohio, with two or more sureties, to be approved by the Auditor of State, in a sum not less than one hundred thousand dollars, conditioned for the faithful and diligent performance of his duties, and that he will truly account for all moneys which may come into his hands, and for the prompt payment to the Treasurer of State, or other parties entitled, all such moneys as aforesaid.

§ 7. That if any commissioner, appointed and qualified as aforesaid, should not find sufficient gold, silver or copper coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, to pay the amount of the taxes and penalty demanded, together with five per centum poundage, and all the costs and expenses of distress and seizure, in the principal office, agency, or place of business, of any corporation, company, or association, described in the fourth section of this act, he is hereby authorized and required also to distrain, seize and remove whatsoever coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, of such corporation, company or association, he may or can find any where within this State, in whose possession or control soever, or in what place soever the same may be. And in case any coin, bullion, bank bills, promissory notes, bills of exchange or other securities, or goods or chattels, be removed from one place to another, within this State, for the purpose of evading such distress and seizure, (or so that the same cannot conveniently be made,) the commissioner may and shall pursue the said coin, bullion, bank bills, promissory notes, bills of exchange or other securities, or goods or chattels, into any county or counties of this State, and distrain and seize the same wherever found. And the commissioner shall remove into the county in which the principal office, agency or place of business of any such corporation, company, or association is situate, all coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, distrained and seized elsewhere, and thereafter proceed in all respects, as if the same had been distrained and seized within the county in which such office, agency or place of business is situate.

Coin, &c., may be seized at any other place.

Or pursued to another county.

And returned to county where principal office situated.

§ 8. That every gift, sale, transfer, assurance, pledge, or delivery of coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, and every endorsement, cancellation, or payment of bank bills, promissory notes, bills of exchange, or other securities, and every bond, security, judgment or execution, made, procured, obtained, or suffered, with intent to evade, hinder, or postpone the operation or effect of this act, shall be deemed utterly void and of no effect.

Sales, &c., to avoid tax. void.

§ 9. That if any person shall conceal or make way with, or by any contrivance remove out of this State, any coin, bullion, bank bills, promissory notes, bills of exchange, or other securities, or goods or chattels, for the purpose of evading, hindering, or postponing the operation or effect of this act, he or she shall be deemed guilty of a misdemeanor, and upon conviction thereof, in the court of proper cognizance and jurisdiction, shall be fined in any sum not exceeding one thousand dollars, or imprisoned in the jail of the county

Penalty for concealing coin, &c., to avoid tax.

not exceeding sixty days, or both at the discretion of the court, and pay the costs of prosecution.

Power of treasurer and commissioner to enter doors, &c.

§ 10. That, in the execution of the duties enjoined by this act, the county treasurer or the commissioner, and all deputies or persons acting by the command of either, shall have power to break and open any outer or inner door, window, or enclosure, and any vault, safe, chest, box, desk, drawer, or other depository, after verbal demand of entrance made, and a refusal or neglect forthwith to open the same. And, in case any person or persons should resist, oppose, or prevent the treasurer or commissioner, or any deputy or person acting by the command of either, in the execution of of the duties enjoined by this act, such person or persons shall be liable to the same prosecution and punishment, in all respects, as if he or they had resisted, opposed, or prevented a sheriff or constable in the execution of a State writ.

Penalty for resisting the officers.

Penalty against treasurer and commissioner.

§ 11. That if any county treasurer, or commissioner, shall refuse or neglect to perform any of the duties enjoined upon him, by this act, at the times herein specified, it shall be taken and deemed as a breach of the condition of his official bond, and shall subject him and his sureties to an action, in that behalf, to recover the amount of the taxes assessed and unpaid, as aforesaid, with interest, and ten per centum penalty, and costs of suit. Which action shall be instituted and conducted, by the Attorney General, as specified in the seventh section of the act to prescribe his duties, passed the first day of May, in the year eighteen hundred and fifty-two.

How injunctions against treasurer or commissioner dissolved.

§ 12. That wherever an injunction has been, or may hereafter be, granted by the court of common pleas, or court of probate, of any district or county, or by any judge of either of the said courts, against any person holding the office of county treasurer, or county auditor, or commissioner herein specified, or any other county or State officer, to restrain such person from performing any duty of his said office, directed or authorized by any statute or statutes, of this State, for the collection of the public revenue, the Attorney General may, upon receiving a copy of the said proceedings, file, in the office of the clerk of the proper court, a motion to dissolve the injunction with costs; and at any time thereafter, on five days notice to the complainant or complainants, or his, her or their counsel, the Attorney General or the prosecuting attorney of the county, may demand that the said motion shall be heard by the proper court, if in session, or by any judge of such court, if in vacation, and such court or judge, as aforesaid, shall thereupon hear, and speedily determine the same. And in case the said court or judge should refuse to dissolve the said injunction, with costs, the Attorney General may file a notice of appeal from such de-

cision in the clerk's office of the said court ; and thereupon the clerk shall forthwith make out and deliver to the Attorney General, or prosecuting attorney, a certified transcript of all the proceedings aforesaid, and copies of all the pleadings, exhibits, and proofs, the expense whereof shall be taxed and allowed to the clerk in the cost-bill of the said cause. And the Attorney General, or prosecuting attorney, after ten days notice to the complainant or complainants, or his, her or their counsel, may present the said transcript and copies to the district court of the said county, or to the supreme court, or any judge thereof, and cause the said motion to be again heard. And the said district court or supreme court, as the case may be, or judge of the supreme court, shall entertain the said motion, and finally decide the same. And the said district or supreme court, under its seal, or judge of the supreme court, under his hand, shall certify the decision of the said motion to the court whence the same was appealed, and, in case of dissolving the injunction, shall send therewith a mandate, under the seal of the court, or hand of the judge, granting the same, directing the court below to proceed in accordance with the decision so certified. And thereupon, in case of such mandate, the injunction shall be dissolved, and the complainant or complainants, shall be charged in the cost-bill with all the expenses and costs thereof. And it shall not be lawful for such complainant or complainants, upon the same bill, or any other bill founded upon the same matters, to have any other injunction.

§ 13. That whenever an action at law, or suit in chancery has been commenced, or may hereafter be commenced against any person holding the office of county treasurer, or county auditor, or other county office, for performing or attempting to perform, any duty authorized or directed by any statute or statutes of this State, for the collection of the public revenue, such treasurer, auditor, or other officer, shall be allowed and paid out of the county treasury, reasonable fees of counsel and other expenses for defending such action or suit, and the amount of any damages and costs adjudged against him, which said fees, expenses, damages and costs shall be apportioned rateably by the county auditor, among all the parties entitled to share the revenue so collected, and by the said auditor shall be deducted from the shares, or portions of revenue at any time payable to each, including as one of the said parties the State itself, as well as the counties, townships, cities, villages, and school districts, and organizations, entitled as aforesaid.

When cost and counsel fees in suits against treasurer, &c. paid by county.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

Supplementary to "the act to provide for the creation and regulation of incorporated companies in the State of Ohio" passed May 1, 1852.

How unpaid stock of incorporated companies to be collected.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That in all joint stock companies, other than railroad companies, which have been or which shall hereafter be organized under the provisions of the act to which this act is supplementary, and any and all instalments of stock which shall remain unpaid sixty days after payment of the same shall have been required, whether such stock be held by an assignee, transferee, or by the original subscriber, the same may be collected by a civil action, or the directors may sell the stock so unpaid, at public auction for the instalment due thereon, including all instalments which shall have become due at the time of the sale, first giving notice of the time and place of sale by publication in some newspaper of general circulation in the county where the principal office of the company is located, and if any residue of money shall remain, after paying the amount due on said stock, the same shall on demand be paid over to the owner of the stock, but if the whole amount due as aforesaid, shall not be paid by such sale, the residue shall be recoverable by a civil action against the assignee or transferee.

Turnpike or plank road companies may improve more than one road.

§ 2. That persons organizing themselves into a turnpike or plank road company under the provisions of the above named act, shall be authorized to designate in their certificate more than one road to be improved and held by such company where the said roads diverge from one common point, or branch from each other in the course of their routes.

Their further powers concerning additional branch roads.

§ 3. That any turnpike or plank road company organized under said act, shall be authorized to file supplementary certificates for the specification and designation of any additional branch road connected with any previous work of such company, and such company may unite with any other turnpike company in maintaining and holding any road in common between them and to divide the proceeds thereof in proportion to their interest.

When to charge additional toll.

§ 4. That when any turnpike or plank road company, after having completed five miles of the road and erected a gate, shall complete any further and continuous portion of their road less than five miles, and had [have] the same approved, they shall be authorized to charge additional toll for such increased length in proportion to the rates authorized by law.

§ 5. That any gas light or coke company in this State may increase its capital stock to an amount not exceeding twice the amount of its original capital, and any such corporation shall have power to take by deed and hold such real estate as is necessary for its legitimate business.

Gas light or coke companies may increase their capital stock.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To amend the seventh, twenty-first, and sixty-ninth sections of an act entitled "an act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 13th, 1852.

§ 1. *Be it enacted by the General Assembly of the State Ohio,* That sections seven, twenty-one, and sixty-nine, of the act entitled "an act for the assessment and taxation of all property in this State, and for levying taxes thereon according to its true value in money," passed April 13, 1852, be and the same are hereby so amended as to read as follows:

Sections of
tax law of
1852 amended

§ 7. Such statement shall truly and distinctly set forth, first, the number of horses and the value thereof; second, the number of neat cattle and the value thereof; third, the number of mules and asses and the value thereof; fourth, the number of sheep and the value thereof; fifth, the number of hogs and the value thereof; sixth, every pleasure carriage of whatsoever kind and the value thereof; seventh, the total value of all other articles of personal property which such person is by this act required to list: provided, that if such person shall exhibit to the assessor the animals or other articles of personal property above enumerated, the value of such property so exhibited may be omitted in such statement, and the assessor shall in such cases determine their value without requiring the oath of the person making such statement as to the value thereof, and such person shall in that case be required only to make oath or affirmation to the value of the remainder of the personal property which he is required to list; eighth, every gold and silver watch and the value thereof; ninth, every piano forte

Amendments
to § 7.
What shall be
set forth in
statement of
taxable prop-
erty.

and the value thereof; tenth, the value of the goods and merchandise which such person is required to list as a merchant; eleventh, the value of the property which such person is required to list as a banker, broker or stock-jobber; twelfth, the value of the materials and manufactured articles which such person is required to list as a manufacturer; thirteenth, the value of moneys and credits required to be listed, including all book accounts; fourteenth, the value of the moneys invested in bonds, stocks, joint stock companies, or otherwise, which such person is by this act required to list.

Amendment
to § 21.

§ 2. That the twenty-first section of said act be and the same is hereby so amended as to read as follows:

Duty of com-
pany as to
listing prop-
erty.

§ 21. The president, secretary, or principal accounting officer of every canal or slackwater navigation company, railroad company, turnpike company, plank road company, bridge company, insurance company, telegraph company, or other joint stock company, except banking or other corporations whose taxation is specifically provided for in this act, for whatever purpose they may have been created, whether incorporated by any law of this State or not, shall list for taxation, verified by the oath or affirmation of the person so listing, all the real and personal property, moneys and credits of such company or corporation within this State, at their actual value in money, in manner following: In all cases return shall be made to the several auditors of the respective counties where such property may be situated, together with a statement of the amount of said property which is situated in each township, incorporated village, city or ward therein; the value of all moveable property shall be added to the stationary and fixed property and real estate, and apportioned to such wards, cities, incorporated villages, or townships, pro rata, in proportion to the value of the real estate and fixed property in said ward, city, incorporated village or township; and all property so listed shall be subject to and pay the same taxes as other property listed in such ward, city, incorporated village or township. It shall be the duty of the accounting officer aforesaid,

Duty of ac-
counting offi-
cer.

Duty of coun-
ty auditor, &c.

to make return to the auditor of state, during the month of May, of each year, the aggregate amount of all property, real and personal, by him returned as required by the provisions of this act, to the several auditors of the respective counties in which the same may be located. If the county auditor, to whom returns are made, is of the opinion that false or incorrect valuations have been made, or that the property of the corporation or association has not been listed at its full value, or that it has not been listed in the location where it properly belongs, or in cases where no return has been made to the county auditor, he is hereby required to proceed to have the same valued and assessed in the same manner as is prescribed in the several sections of this act regulating the duties of

county auditors: provided, that nothing in this section shall be so construed as to tax any stock or interest in any joint stock company held by the State of Ohio: provided, that every agency of an insurance company incorporated by the authority of any other state or government, shall return to the auditor of the county in which the office or agency of such company may be kept, in the month of May annually, the amount of the gross receipts of such agency, which shall be entered upon the tax list of the proper county, and subject to the same rate of taxation for all purposes that other personal property is subject to at the place where located.

§ 3. That section sixty-nine of said act, be and the same is so amended as to read as follows: Amendment to § 69.

§ 69. The commissioners of each county shall, at their March or at their June session, annually, determine on the amount to be raised for ordinary county purposes, for bridges, for public buildings, for the support of the poor, and for interest and principal on the county debt. The commissioners, however, shall set forth upon the record of proceedings specifically the amount to be raised for each of the above defined purposes. The county auditor shall carefully ascertain the net amount collected for each purpose under said levy; and it shall not be lawful to use any specific fund for any other purpose than the one for which the same was specifically levied, until the purpose for which such tax was levied shall have been accomplished. Duty of commissioners & county auditor.

§ 4. That the original sections seven, twenty-one and sixty-nine of the act to which this act is amendatory, be and the same are hereby repealed. Sections repealed.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate, pro tempore.

March 14, 1853.

AN ACT

Supplementary to the act to provide for compensation to the owners of private property appropriated to the use of corporations.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all cases where any railroad company already Railroad companies may.

appropriate
school lands.

incorporated or that may be hereafter incorporated within this State, has located or shall hereafter locate their railroad through any part of reserved sections twenty-nine or sixteen, or through any section or part of section granted by congress in lieu of section sixteen, for school purposes, (the same remaining unsold,) or through any town lot or parcel of ground used for or devoted to school purposes, said railroad company may appropriate so much of said lands or lots as may be necessary for the purposes aforesaid in such manner and upon such conditions, as is provided by law in other cases, and notice of such appropriation served on such trustees or school officers shall have the same force and effect as notice in any other case to the owner of the land appropriated.

§ 2. The moneys arising from such appropriation shall be disposed of by such trustees or school officers in such manner as shall be provided by law.

When probate
judge is inter-
ested in any
such corpora-
tion proceed-
ings had be-
fore court of
common pleas

§ 3. That in any case wherein the probate judge of any county of this State, shall be interested either as a stockholder, director or otherwise, in any corporation seeking to appropriate private property to its use, it shall be the duty of said probate judge on the filing of the statement or application provided for by the second section of the act to which this is supplementary to certify to the court of common pleas of the proper county the fact that he is so interested as aforesaid, and then and in that case the proceedings in said court of common pleas shall be had and conform, in all respects, so far as applicable, to the several provisions of the act to which this is supplementary, and all the powers conferred and duties imposed upon the probate judge by the terms of said act, shall devolve upon the court of common pleas, and said court of common pleas shall have full power to make such orders and direct such proceedings to be had as may be necessary to do full justice between the parties according to the true spirit and intent of the act to which this is supplementary: provided, that either party shall have the right to appeal from the final judgment of said court of common pleas, to the district court, as in other cases, or to have the proceedings of said court of common pleas reviewed on error: provided, furthermore, that said corporation seeking to appropriate property as aforesaid may, on depositing the amount of damages and costs assessed by the court of common pleas, with the clerk of said court, be entitled to enter into possession of the property sought to be appropriated.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate, pro tempore.

March 14, 1853.

AN ACT

For the incorporation of townships.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the townships of the several counties within this State, which have been, or that shall hereafter be lawfully laid off and designated, be and they are hereby formed into bodies politic and corporate, for the purposes of exercising and enjoying the rights and privileges hereinafter enumerated, and they shall be capable of suing and being sued, pleading and being impleaded, in any court of this State; and shall have power to receive any devise, bequest, or deed of gift for the conveyance of real estate to the township, for the benefit of the township, either for the purpose of a public square, or any other useful purpose specified in such devise, bequest or deed, and the said trustees, and their successors in office, shall hold the same in trust for the township, for the purposes specified in such conveyance; *Provided*, no township shall be laid off having less contents than twenty-two square miles, unless such township includes a city or incorporated village.

Townships are bodies corporate.

General powers.

§ 2. That whenever it shall be made to appear to the board of commissioners of the proper county, by petition signed by a majority of the householders residing within the boundary of such proposed change or alteration; provided that thirty days previous notice of such intended application shall be first given by advertisement, at three public places within the bounds of such change or alteration, the commissioners shall cause the boundaries of such township so made, changed or altered, to be recorded in a book, to be provided and kept for that purpose, and give to such township such appropriate name as the board of commissioners may think proper; *Provided* that no two townships in any one county shall be set off and incorporated by the same name.

How boundaries of townships may be changed.

§ 3. That the county commissioners of any county within this State, may, if they judge necessary, for good cause shown, and on petition of a majority of the electors of any incorporated township in such county, alter the name of such township; *Provided* that thirty days previous notice of such intended application be given by advertisement, at three public places in such township; *Provided*, also, that such change shall in no wise affect the right of property, or the internal concerns of such township.

Commissioners may alter name of township.

§ 4. That whenever any new township shall be set off, the commissioners shall forthwith give public notice by advertisement, in three public places in such township, at least ten days

Election in new townships.

before the time, of the time and place of holding an election for township officers, and the electors of such township shall at such time and place assemble, and then and there elect township officers; and the officers so elected shall hold their offices until the next annual township election, and until their successors are elected and qualified.

When, where
and how elec-
tions held.

§ 5. That on the first Monday of April, annually, the electors in each and every township shall assemble at such place in their respective townships, as may be appointed by the trustees thereof, (or by the advertisement of the commissioners in case of newly set off townships,) for the purpose of electing their township officers; and the electors, when so assembled to the number of ten or more, between the hours of six and ten before noon, shall proceed to choose viva voce, three persons having the qualifications of electors, judges of the election, and two persons having like qualifications to serve as clerks; but in townships for which township officers had been chosen for the preceding year, the trustees shall serve as judges, and the clerk and such other persons as the judges may appoint, shall serve as clerks of the election then to be holden, and if either of the trustees or clerk shall fail to attend, the place of such trustees or clerk shall be filled by the electors viva voce as aforesaid.

Oath of judg-
es and clerks
of elections.

§ 6. That previous to their receiving any votes, the judges and clerks, except they be trustees or clerk of the township, shall severally take an oath or affirmation faithfully to discharge the duties of their respective offices in the form following:—You, A—— B——, do solemnly swear (or affirm) that you will perform the duties of a judge or clerk of this election, (as the case may be) according to law, and the best of your abilities, and that you will endeavor to prevent any fraud, deceit, or abuse whatever, in conducting the same; which oath or affirmation, the judges and clerks are hereby empowered to administer to each other.

What officers
shall be elect-
ed.

§ 7. That after the judges and clerks have been qualified as aforesaid, the electors shall proceed to the election of one township clerk, three trustees, one township treasurer, and such number of constables and supervisors of highways as may be directed by the trustees; and the judges and clerks, in discharging their duties in said election, shall be governed in all respects by the act regulating elections, except that it shall not be necessary to send a poll book to the clerk of the court of common pleas of the proper county.

Oath of offi-
cers so elect-
ed.

§ 8. That officers so elected shall, within ten days after their election, take oath or affirmation before a person authorized to administer the same, faithfully and impartially to discharge the duties of their respective offices, and when so elected and qualified, shall continue in office one year, and until their successors are chosen and qualified.

§ 9. That every constable, within ten days after his election or appointment, and before he enters on the duties of his office, shall give bond to the State of Ohio in any sum not exceeding two thousand dollars, nor less than five hundred dollars, with one or more sureties, resident in the proper township, such as the trustees thereof shall approve, conditioned for the faithful and diligent discharge of the duties of his office, and the township clerk shall make an entry of such bond, and file the same in his office.

Bond of constable.

§ 10. That it shall be the duty of the township clerk to keep a fair and accurate record of the proceedings of the trustees at all their meetings, to make out within ten days after the election of township officers a list of all officers thus elected, stating the offices to which they are respectively chosen, and deliver the same to a constable of the township, requiring him forthwith to summon such officers to appear before a justice of the peace of the proper township, or before such clerk, within ten days from the day of election, to take such oath or affirmation as is by law required; which oath or affirmation the said township clerk is hereby authorized to administer, and required to make a record thereof.

Duties of township clerk in notifying officers elected.

§ 11. That if any of the township officers shall take the oath of office before a justice of the peace, such justice shall return a certificate thereof to the township clerk to be recorded as aforesaid; the township clerk shall likewise record in a book provided by him for that purpose, all such township roads as may be established by the trustees; and also the ear-marks of cattle, sheep and hogs, used by the owner or owners, and such other marks and brands as any person may wish to have recorded in said township book; but he shall not record the same mark to two different persons.

Township records.

§ 12. That said clerk shall be entitled to receive of the person employing him, as aforesaid, the sum of twenty-five cents for every such entry of brands or marks, of which entry he shall, if required, deliver a certified copy to the owner; for recording roads, said clerk shall be entitled to receive the sum of ten cents for every one hundred words, to be paid by the person at whose request the said record is made, except such township roads which are by law to be opened and kept in repair under the direction of the proper supervisors, and for recording such roads, the clerk shall be paid out of the township treasury.

Fees of clerk for making record.

§ 13. That it shall be the further duty of the township clerk, immediately after the township officers shall have made their annual settlement of accounts, to make out and enter in the record book of the township an account of all the receipts and expenditures of the township of the preceding year, stating for what the money was received, and how expended, a copy of which account he shall set up at the place of hold-

Further duty of township clerk.

His allow-
ance.

ing township elections, on the morning of the first Monday of April annually; for making his account as above required, and also for keeping a record of their proceedings at their several meetings, and attending such suits as may be instituted in favor of the township, and for any other township business they may require him to perform, the trustees shall allow said clerk a reasonable compensation, to be paid by the township treasurer out of the funds of the township, on the order of said trustees.

Duties of trust-
ees

§ 14. That it shall be the duty of the trustees in each township, at their meeting on the first Monday in March, annually, to divide their townships into road districts, where the same has not been done, and to make any alteration they may think proper in those which were previously laid out, and give notice of the number of supervisors and constables to be chosen in each road district; *Provided*, that it shall not be lawful for any elector to vote for more than one supervisor, and if any ballot shall contain more than one name for the office of supervisor, the same shall be deemed void so far as that officer is concerned; and a majority shall be a quorum to do business at all meetings of the trustees.

Same subject.

§ 15. That the trustees shall settle the accounts of the supervisors of highways, and the township treasurer, and examine and settle all demands and accounts against the township, for which purpose the trustees, supervisors, treasurer and township clerk shall meet on the first Monday of March, annually, at the place of holding the township meeting, and the township clerk shall make an entry and true statement of all accounts allowed and adjusted by the trustees in a book to be provided for that purpose, and for every demand against the township allowed by the trustees, an order on the township treasurer for the full amount thereof, payable on demand.

Warrant re-
quiring no-
tice of elec-
tion to be
given.

§ 16. That at least twenty days before the annual township meeting, the trustees shall issue their warrant to a constable of the township, directing him to notify the electors of such township to assemble at the time and place appointed for the annual meeting, and said warrant shall enumerate the officers to be chosen at such meeting; and on application of two or more freeholders of the township for that purpose, said trustees shall insert in said warrant such other business, matter, or thing, as may be proposed to be submitted to said township meeting.

Notice of elec-
tion.

§ 17. That the constable who shall receive such warrant, shall notify the electors of such township, by setting up copies of such warrant in at least three public places in such township, at least ten days before the meeting of such electors: *Provided*, however, that in any case where the office of one or more of the trustees is vacant, the township clerk, together with the trustee or trustees in office, shall issue the warrant aforesaid.

§ 18. That any person elected or appointed to any office under this act, who shall neglect or refuse to serve therein, shall forfeit and pay to and for the use of the township wherein he may reside at the time of such election, the sum of two dollars, to be recovered by an action before any justice of the peace of said township; and the township clerk shall, in the name of said township, demand, receive, or sue for such forfeiture, and pay over the same when collected to the township treasurer: Provided, that no person shall be compelled to serve in any township office two years in succession.

Penalty for refusing to hold office.

§ 19. That each and every person elected and qualified to the office of township treasurer, and the offices of supervisors of roads and highways, shall, previous to entering on their offices, respectively give bond, with security, to the trustees of such township, and their successors in office, in such sum as the trustees may deem proper, conditioned for the faithful receiving and paying over of all moneys which may come into their hands, and for the faithful performance of their duties by virtue of their office, which bonds shall be lodged with the clerk of the township, and if the said bonds or any of them, shall become forfeited, the township clerk, by order of the trustees, is hereby authorized and required to sue for and collect the same for the use of the township, or any person or party entitled to the same.

Official bonds.

Suits thereon.

§ 20. That by reason of non-acceptance, death, or removal of any person chosen to any office in any township at the annual meeting aforesaid, or in case where there is a vacancy from any other cause, the trustees shall appoint a person having the qualifications of an elector to fill such vacancy, and the person thus appointed shall take the same oath, give bond and be liable to the same penalty as though he had been chosen at the annual meeting.

How vacancy filled.

§ 21. That in case there should not at any annual meeting under this act, be a sufficient number of electors assembled for holding the election, so that no township officers can be chosen by the electors, the trustees shall appoint all township officers in this act enumerated, and the township officers thus appointed, shall take the same oath, give bond and be liable to the same penalties as though they had been elected at the annual election.

Same subject.

§ 22. That each trustee, clerk, and supervisor of roads and highways shall be entitled to receive one dollar for every day he or they may be necessarily employed in the discharge of their respective duties, and the trustees shall allow the constable a reasonable compensation for advertising the time of holding township elections, and notifying the several township officers of their election, to be paid out of the township treasury on the order of the trustees attested by the clerk: Provided, that supervisors of roads and highways shall not be

Fees of clerk, supervisor and constable.

allowed any compensation for the two days that they are required by law to labor on the road.

Fees of treasurer.

Books &c., to be delivered to successor.

Penalty for failure.

Trustees may fix place of holding elections.

May erect house, &c.

Power to preserve order, &c.

How road funds appropriated.

Trustees to purchase plows, scrapers, &c.

§ 23. That each township treasurer shall be allowed, and may retain two per centum of all moneys paid into the township treasury, for receiving, safe keeping, and paying over the same to the order of the trustees; and all township officers shall deliver over to their successors in office, all books, papers and obligations belonging to their respective offices or deposited with them under this act, as officers of the township, and if any person who has been a township officer, shall refuse to deliver over as aforesaid, any law books or papers, the property of the township, he or they, so offending, shall on conviction thereof before any justice of the peace, be fined in any sum not less than five nor more than fifty dollars, for the use of the township.

§ 24. The trustees of each and every township in this State, shall have power to determine on, and fix the place of holding elections within their townships, for which purpose they are hereby authorized to lease any house already erected, or contract for, on permanent lease, or otherwise, a site, and erect thereon a house for the purposes aforesaid; and they shall give previous notice as in case of township meeting; the trustees at every election, or township meeting, shall have power to cause any and every disorderly person to be removed, and if necessary, confined until the close of such election, or meeting; and every constable present shall obey their orders and directions, for the purpose of preserving order at such meeting.

§ 25. That whenever the treasurer of any township shall have received any money from the county treasury for road purposes in such township, he shall notify the trustees of such township of the same, who shall cause the money so received, to be appropriated to building bridges, or repairing public roads within their townships, by advertisement, and selling to the lowest bidder, (if in the opinion of the trustees, such bidder be competent to perform the same,) such part or parts of any road as aforesaid, as they may deem expedient, equal to the amount of money to be appropriated as aforesaid, and whenever such labor shall be performed agreeably to the contract or conditions of the sale, the trustees, or any two of them, shall draw an order on the treasurer of the township, in favor of the person or persons who have performed such labor, for the amount due for the same, which order shall be paid by the township treasurer on demand.

§ 26. That the township trustees are hereby authorized to purchase a sufficient number of plows and scrapers for the use of such township, and the same shall be used exclusively for that purpose, and the costs and expenses thereof shall be paid out of any moneys in the township treasury not otherwise ap-

propriated, on the order of the trustees; and it shall be the duty of the trustees to cause the plows and scrapers so purchased to be put in the possession of some supervisor or supervisors, who shall take care of and preserve the same when they are not in use; and if there shall not be sufficient money in any township treasury to purchase a suitable number of plows and scrapers, the trustees may cause the same to be procured by the application of any labor or tax for road purposes which may be due within such township.

§ 27. That each and every trustee of any township in this State, who shall refuse or neglect to do and perform all and singular the duties enjoined on him or them by this act, he or they shall be fined in any sum not exceeding fifty dollars nor less than five, to be recovered before any justice of the peace of the county, by any person suing for the same, and appropriated as other fines under this act: Provided, that if any such trustee shall conceive himself aggrieved by the judgment of such justice, he shall have the same right of appealing as is given in civil suits or cases, and under similar restrictions.

Penalty
against trustees.

§ 28. That the trustees of their respective townships are hereby authorized to levy a tax, annually, for township purposes, not exceeding one-fourth of one mill on each dollar of the valuation of taxable property within such township, and for the support of the poor, such sum as may be necessary for that purpose, not exceeding one mill on each dollar of valuation, as aforesaid. And when it shall become necessary for the payment of existing legal and just claims against such township, the trustees shall have power to levy a tax not exceeding three mills on the dollar, within any one year, including the tax for township purposes and for the support of the poor, as aforesaid, which shall be determined and certified by the trustees, or a majority of them, and the certificate thereof delivered to the auditor of such county on or before the first Monday in June, annually.

Power of trustees to levy taxes.

§ 29. That it shall be lawful for the trustees of any township in any county in this State, to purchase and protect or improve a cemetery or burying-ground, not exceeding ten acres of land, for the use of such township; and for the purpose of paying for and improving and protecting such grounds, they are hereby authorized to levy and assess upon the taxable property of such township, such a per centum as will raise any sum not exceeding one thousand dollars the first year, or fifty dollars any one year thereafter. That it shall be the duty of the coroner of any county, to bury such dead persons as he may hold an inquest upon, and who have left no means wherewith to pay the expenses of their burial in the burying ground of that township wherein such inquest was held, and the necessary expenses of such burial shall be allowed and paid by township trustees; the coroner shall also be allowed for his services

Power to purchase cemetery, &c.

under this section, by the trustees of the proper township, fifty cents for each person so buried.

But question
first submit-
ted to voters.

§ 30. That before any assessment shall be made as provided for in the foregoing section, it shall be necessary to submit the question to the voters of such township, at some regular election therein, for which purpose it shall be the duty of the township clerk, when thereunto requested by the trustees of the township, or any six voters of the township, to give notice at least twenty days before such election, by posting up in three public places in such township, notice specifying the amount of tax which it is proposed to assess under such vote, and the object to which the same is to be applied, and if a majority of the voters at any such election, shall deposit ballots having written or printed thereon, "tax for burying-ground," the trustees shall immediately notify the auditor of the county, who shall enter the same on the tax duplicate against the taxable property of said township, which shall be collected by the county treasurer, and paid over to the treasurer of the township, in the same manner as other taxes belonging to said township, to be paid out on the order of the trustees, for the purpose, or purposes specified in the foregoing section of this act, and for no other purpose or object, unless after paying all the expenses incurred, there should be a surplus, then, and in such case, the surplus may be transferred to the township fund.

Concerning
judgments
against town-
ships.

§ 31. That in all cases where a judgment has been or may hereafter be rendered against any township by any justice of the peace or court of record in this State, it shall be the duty of such justice of the peace or clerk of the court wherein judgment shall have been rendered, to make out a certified abstract of such judgment with the amount of costs accruing thereon, and the same shall be served by any constable of the township against which such judgment shall be rendered, or by the sheriff or coroner of the county in which such township may be situated, and such service shall be by leaving an attested copy of such abstract with the clerk of the township against which such judgment shall be rendered, and the clerk of such township shall forthwith notify the township trustees thereof, and said trustees shall draw an order on the township treasurer in favor of such justice or clerk, for the amount of such judgment and cost, and it shall be the duty of the township treasurer to pay the same on presentment out of the appropriate funds, if there shall be any such funds in his possession: *Provided*, that the trustees shall nor be required to issue their order for the amount of any judgment when the same shall have been appealed to a higher tribunal, until final judgment thereon.

Acts repealed.

§ 32. That the act entitled "an act for the incorporation of townships," passed March 5, 1831, and the amendatory acts

thereto, passed January 15, 1833, March 3, 1834, February 19, 1835, be and they are hereby repealed: *Provided*, that all rights which have accrued, and all suits and proceedings now pending under the provisions of the acts hereby repealed, shall be prosecuted and determined agreeably to and under the provisions of said acts, and all judgments which have heretofore been recovered, or which hereafter may be recovered, under the provisions of said acts, shall be carried into execution under the provisions of the acts hereby repealed; provided further, that nothing in this act shall be so construed as to affect the term of office of any township officer heretofore elected and qualified.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

To provide for the division of Townships into Election Precincts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That it shall be the duty of the commissioners of each county in this State, on the presentation of the petitions of the citizens of any township in their respective counties, signed by a majority of the electors in such township, praying for a division of said township into election precincts, to issue their order for such division, and appoint therein three good and judicious freeholders and electors of said county, who shall not be residents of said township, naming in said order the time of meeting of said freeholders, who being duly sworn, shall, at the time named in said order, or within five days thereafter, proceed to view and divide said township into election precincts, as near the prayer of the petitioners as they may deem just and proper; and said freeholders shall, within ten days, make report of their proceedings to the commissioners of the county issuing said order; *Provided*, that any two of the petitioners shall execute a bond, to the acceptance of the commissioners, payable to the State of Ohio, in the penal sum of two hundred dollars, conditioned for the pay-

Townships divided into election precincts, on petition.

Three freeholders appointed to view and report to commissioners.

ment of all costs and expenses, in case the prayer of the petitioners shall not be granted.

Duty of commissioners on receiving report.

§ 2. It shall be the duty of the commissioners, at their next regular session after receiving the report of said freeholders, to read the same publicly; and there being no remonstrance against said division, to declare said township so divided; but if any twelve freeholders, electors of such township, shall remonstrate against said division, then such commissioners shall hear and determine the said matters therein, and make such order for or against such division as they may think just and proper.

Compensation to the freeholders appointed.

§ 3. The freeholders appointed under the first section of this act, shall each receive as a compensation for their services, the sum of one dollar per day, to be paid out of the township treasury, interested in said division.

Duty of trustees after division of township.

§ 4. That in all townships which have been divided according to the provisions of this act, it shall be the duty of the trustees of said township to give fifteen days notice of the time and place of holding elections in the precincts of said township, by posting up written or printed notices in such number of places as to them shall seem proper, for the general information of the electors of said precincts.

Judges and clerks of election, how chosen.

§ 5. In all elections for state, county or township officers, held in the precincts of said township, it shall be the duty of any trustee or trustees of said township, to act as judge or judges of election, in the precincts in which said trustee or trustees may reside; and the township clerk shall act as one of the clerks of all elections held as aforesaid, in the precinct in which he may reside; and all other judges and clerks shall be chosen viva voce, by the electors of the precinct where they may reside.

Time of making returns of township elections.

§ 6. In all elections for township officers, the returns of such shall be made to the township clerk, within three days after the day on which such election is held.

Judge and clerk to be qualified.

§ 7. It shall be the duty of the judges and clerks who may be chosen, previous to entering upon the discharge of their respective duties, and before receiving any votes at any election held within any precinct, each to take an oath or affirmation, as is or may be provided in a general act regulating elections, and be governed in all respects in the discharge of their duties as judges of elections, by the provisions of any general law now in force, or may hereafter be enacted.

Their duty and compensation

§ 8. The judges and clerks appointed under the provisions of this act, shall be governed in their election returns, and the charge of the ballot boxes, by the provisions of the before recited acts, and shall receive the same compensation for their services as is allowed to judges and clerks of elections by law.

§ 9: The returns of all elections other than those for officers in said townships, shall be made to the proper person or officer, as is required by law in similar cases. Election returns.

§ 10: This act shall have effect and be in force from and after the first day of April, 1853. Time of taking effect.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

Regulating descents, and the distribution of personal estates.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That when any person shall die intestate, having title or right to any real estate of inheritance in this State, which title shall have come to such intestate, by descent, devise or deed of gift from any ancestor, such estate shall descend and pass in parcenary to his or her kindred in the following course: Order of descent where title came by descent, devise or deed of gift.

First. To the children of such intestate, or their legal representatives. 1. To the children.

Second. If there be no children or their legal representatives, living, the estate shall pass to the brothers and sisters of the intestate, who may be of the blood of the ancestor from whom the estate came, or their legal representatives, whether such brothers and sisters be of the whole, or half blood of the intestate. 2. Brothers & sisters.

Third. If there be no brothers or sisters of the intestate, of the blood of the ancestor from whom the estate came, or their legal representatives, and if the estate came by deed of gift from an ancestor, who may be living, the estate shall ascend to such ancestor. When to ascend to ancestor;

Fourth. If the ancestor from whom the estate came, be deceased, the estate shall pass to, and vest in the husband or wife, relict of such intestate during his or her natural life. or to his wife, if he be dead.

Fifth. If such intestate leave no husband or wife, relict of himself or herself, or at the death of such relict, the estate shall pass to and vest in the children of the ancestor from whom the estate came, or their legal repre-

Further order
of descent in
such case.

representatives, if there be no children of such ancestor, or their legal representatives, the estate shall pass to and vest in the brothers and sisters of such ancestor, or their legal representatives, and for want of such brothers or sisters, or their legal representatives, to the brothers and sisters of the intestate of the half-blood, or their legal representatives, though such brothers and sisters be not of the blood of the ancestor from whom the estate came.

Sixth. If there be no brothers or sisters of the intestate, or their legal representatives, the estate shall pass to the next of kin to the intestate of the blood of the ancestor from whom the estate came.

Order of de-
scend where
estate came by
purchase, &c.
1. Children.

§ 2. That if the estate come not by descent, devise or deed of gift, it shall descend and pass as follows:

First. To the children of the intestate and their legal representatives.

2. Husband
or wife.

Second. If there be no children or their legal representatives, the estate shall pass to and be vested in the husband or wife, relict of such intestate, during his or her natural life.

3. Brothers
and sisters of
whole blood.

Third. If such intestate leave no husband or wife, relict of himself or herself, the estate shall pass to the brothers and sisters of the intestate of the whole blood and their legal representatives.

4. Brothers
and sisters of
half blood.

Fourth. If there be no brothers or sisters of the intestate of the whole blood, or their legal representatives, the estate shall pass to the brothers and sisters of the half blood and their legal representatives.

When to as-
cend to father;

Fifth. If there be no brothers or sisters of the intestate of the half blood or their legal representatives, the estate shall ascend to the father; if the father be dead, then to the mother.

or to next of
kin.

Sixth. If the father and mother be dead, the estate shall pass to the next of kin to, and of, the blood of the intestate.

When to pass
to husband or
wife, and
when to es-
cheat.

§ 3. When any person shall die intestate having title or right to any real estate, and there shall be no person living entitled to inherit the same, by the provisions of this act, the said real estate shall pass to and be vested as an estate of inheritance in the husband or wife, relict of such intestate, and if there be no such relict it shall escheat to, and be vested in, the State of Ohio.

Distribution
of personal es-
tate.

§ 4. If any person shall die intestate leaving any goods, chattels, or other personal estate, such goods, chattels, or other personal estate, shall be distributed agreeably to the foregoing course, prescribed in the second section of this act, saving, however, such right as any widow may have to any portion of such personal estate: provided, that if there shall be no person living entitled to inherit the same by the provisions of this act, such goods, chattels, or other personal estate, shall pass to and be vested in the State of Ohio, and it shall be and is hereby made the duty of the prosecuting attorney of the coun-

ty in which letters of administration were or may be granted upon such estate, to collect the same and pay it over to the treasurer of such county, to be applied exclusively to the support of common schools of the county in which the estate may be so collected in such manner as may be prescribed by law.

§ 5. When any person shall die intestate leaving children, and none of the children of such intestate shall have died, leaving children or their legal representatives, such estate shall descend to the children of such intestate, living at the time of his or her death, in equal proportions.

When estate to descend to children living at intestate's death.

§ 6. The provisions of the last preceding section shall apply in every case in which there are several descendants in a direct line of lineal descent, and all of equal degree of consanguinity to such intestate, whether children, grand children, or great grand children, or of a more remote degree of consanguinity to such intestate; so that the estate shall pass to such persons of equal degree of consanguinity to such intestate in equal parts, however remote from the intestate such equal and common degree of consanguinity may be.

How provisions of last section shall apply.

§ 7. If any of the children of such intestate be living and any be dead, the estate shall descend to the children of such intestate who are living, and to the legal representatives of such of his or her children as are dead, so that each child of the intestate who shall be living, shall inherit the share to which he or she would have been entitled, if all the children of the intestate had been living, and so that the legal representatives of the deceased child or children of the intestate shall inherit equal parts of that portion of the estate to which such deceased child or children would have been entitled had such deceased child or children been living.

Same subject.

§ 8. The provisions of the last preceding section shall be construed to apply in all cases in which the descendants of the intestate, entitled to share in the estate, are of unequal degree of consanguinity to the intestate, so that those who are of the nearest degree of consanguinity shall take the share to which he or she would have been entitled, had all the descendants in the same degree of consanguinity with him or her, who shall have died leaving issue, been living.

Further provisions as to the construction of this act

§ 9. The provisions of the fifth, sixth, seventh and eighth sections of this act, shall apply, both to personal and real estate.

Same subject.

§ 10. If any estate, real or personal, has been given by any intestate in his lifetime as an advancement to any child or children of such intestate or their descendants, it shall be considered and held to be a part of the estate of the intestate, so far as it regards the division and distribution thereof, among his or her children, or their descendants, and shall be taken by such child or children or their descendants towards his or her share of the estate of the intestate.

Advancements.

- Same subject. § 11. If the amount of such advancement shall be equal to or exceed the share of the heir to whom such advancement shall have been made, he or she shall be excluded from any further portion in the division or distribution of the estate; but shall not be required to refund any part of such advancement, and if the amount so advanced shall be less than his or her full share, he or she shall be entitled to as much more as will give him or her, his or her full share of the estate of the intestate.
- Same subject. § 12. If any such advancement shall be made in real estate, the value thereof, shall be considered and taken as a part of the real estate to be divided, and if it be in money or other personal estate, it shall be considered and taken as a part of the personal estate to be distributed, and if in either case it shall exceed the share of the real or personal estate that would have come to the heir to whom such advancement was made, he or she shall not refund any part of it, but shall receive so much less out of the other part of the estate of the intestate, as will make his or her whole share equal as near as can be estimated, to that of either of the other heirs who are in the same degree of consanguinity with him or her.
- Same subject. § 13. If the value of the estate, real or personal, so advanced, shall be expressed in the deed of conveyance, or in the charge thereof, made by the intestate, or in the receipt in writing, given by the person receiving such advancement, it shall be considered and taken to be of that value, in the division and distribution of the estate, otherwise it shall be estimated at its value when advanced.
- As to aliens, § 14. No person who shall be capable of inheriting shall be deprived of the inheritance by reason of any of his or her ancestors having been aliens.
- and bastards. § 15. Bastards shall be capable of inheriting or transmitting inheritance on the part of their mother in like manner as if they had been born in lawful wedlock, and if the mother be dead the estate of such bastard shall descend to the relatives on the part of the mother as if the intestate had been legitimate.
- When illegitimate children deemed legitimated. § 16. When a man shall have by a woman one or more children, and shall afterwards intermarry with such woman, such child or children, if acknowledged by him as his child or children, shall be deemed legitimate; the issue of parents whose marriage shall be deemed null in law, shall nevertheless be legitimate.
- Curtsey and dower not affected. § 17. Nothing in this act shall be so construed as to affect the right which any person may have to any estate by the curtesy or in dower, in any estate of any deceased persons, and surviving husbands whether there has been issue born during the coverture or not, shall be entitled to the estates of their deceased wives by the curtesy.

§ 18. Whenever in this act any person is described as living, it shall be understood to mean that he or she was living at the time of the death of the intestate from whom the estate came, and whenever any person is described as having died, it shall be understood to mean that he or she died before such intestate.

Further construction of the act.

§ 19. Descendants of the intestate begotten before his or her death, but born thereafter, shall, in all cases, inherit in the same manner as if they had been born in the lifetime of the intestate, and had survived him or her.

Descendants born after intestate's death to inherit.

§ 20. Permanent leasehold estates, renewable forever, shall be subject to the same law of descent and distribution as estates in fee are subject to by the provisions of this act.

Permanent leases subject to descent, &c.

§ 21. That the act entitled "an act regulating descents, and the distribution of personal estates," passed February 24, 1831, and the act entitled "an act to amend the act entitled an act regulating descents and the distribution of personal estates," passed March 7, 1835, be and the same are hereby repealed.

Swan's stat., pages 286-7, repealed.

§ 22. This act shall not affect any estate to which any natural person shall have become entitled by or under any statute of the State heretofore in force, but this section shall not apply to escheats to the State.

Certain estates not affected by this act.

§ 23. This act shall be in force and take effect from and after the first day of July, 1853.

Time of taking effect.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate, pro tempore.

March 14, 1853.

AN ACT

To provide for the maintenance and better regulation of Common Schools in the City of Cincinnati.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the corporate authorities of the City of Cincinnati are hereby authorized and required, at the expense of said city, to provide for the support and regulation of the common schools of said city, in the manner prescribed by the provisions of this act.

Corporate authorities of Cincinnati to provide for common schools.

A "board of trustees and visitors of common schools" to be elected.

§ 2. At every annual election of city officers, there shall be elected in each ward of said city, by the qualified electors thereof, one judicious and competent person to serve as trustee and visitor of common schools of said city, for the term of two years from the first Tuesday in July succeeding his election, and until his successors shall be elected and qualified; and the persons so elected, together with the trustees and visitors of the several wards of said city already elected for two years, and whose term of office will not expire at the close of the present school year, shall constitute a board of education for said city, to be denominated the "Board of Fund Trustees and Visitors of Common Schools."

Board to appoint officers and fill vacancies.

§ 3. The said board of trustees and visitors shall take an oath of office, and at their first meeting in July, choose a president, vice president and corresponding secretary; the said board may appoint and fix the salaries of a superintendent, clerk and messenger, and prescribe their duties; they shall meet once in every week, at such time and place as to them may be convenient, a majority of whom shall constitute a quorum; they shall have power to fill all vacancies in their own body, and if any trustee shall absent himself from the regular meetings of said board for six consecutive weeks, unless by reason of sickness or by consent of the board, such non-attendance shall be considered a virtual resignation on his part, and the board, upon entering such fact upon its minutes, shall proceed to fill such vacancy. They shall also have power to make such by-laws, rules and regulations for their own government, not inconsistent with this act and the laws of the State, as they may deem proper and expedient, and they shall cause a record of their proceedings to be kept in books provided for that purpose.

Board to fix the amount of school taxes.

§ 4. That the said trustees and visitors shall, on or before the second Monday of May, annually, cause to be certified to the city council of Cincinnati an estimate of the amount necessary to be raised in said city for school purposes, not exceeding two mills on the dollar, upon all property in said city valued or appraised and liable and subject to taxation for State and county purposes, corporation, school house, and school taxes; and the city council shall certify the said amount so to be raised to the county auditor, who is hereby authorized and directed to place the same on the duplicate of taxes for said county in the same manner as township taxes now by law are placed on such duplicate, which said school taxes shall be collected by the county treasurer of said county, and be by him paid into the city treasury on the first day of January annually.

Court may alter or make new school districts.

§ 5. That the said board shall have power to alter the boundaries of the school districts of said city, and to form new districts when the public convenience requires it.

§ 6. That the said trustees and visitors shall have authority to purchase in fee simple (subject to the confirmation of the council) or receive as a donation for the use of said city such additional lots of land or sites for school houses, as may be required for the several districts in said city, and shall, by concurrence of the city council cause to be erected thereon good and substantial school houses of such dimensions and capacity as shall be requisite and convenient for the use of the common schools of said city; the purchase money of said lots and the expense of erecting buildings thereon shall be paid out of the common school funds provided for in the fourth section of this act; and all property, so purchased, and all other property heretofore purchased, for school purposes, shall be held exempt from the general debts of said city and only liable for debts contracted for common school purposes.

Their power as to the purchase of land and building school houses.

§ 7. That the said trustees and visitors shall cause to be paid out of the school funds made subject to their control by this act, the interest accruing on the bonds given by the city for common school purposes, and shall provide, by a sinking fund or otherwise, for the final redemption and payment of said bonds, as the same shall become due. And all other funds made subject to the control of said board by this act, shall be exclusively applied to the maintenance and support of the schools hereby provided for, and for no other purpose whatever.

Interest on bonds, how paid. Payment of bonds to be provided for. Funds to be applied to school purposes exclusively.

§ 8. That all moneys heretofore collected for the use of common or colored schools, remaining on hand and unexpended, in the city treasury, shall be held by the city treasurer subject to the order of said board, for the payment of bills for school purposes, by them allowed, and to be paid out by said treasurer on the check of the city auditor, and shall be kept on deposit where other city funds are deposited; and all such moneys, and all other moneys belonging to the common school fund, or appropriated in any manner for the purpose of public education, paid into the city treasury, shall be kept by said treasurer as a separate and distinct fund, and the same shall not be applied, paid over, or pledged under any pretence whatever, to any other use than that for which it was levied and collected, and paid into the city treasury, nor upon any other order or authority than that of the board of trustees and visitors, as certified by their clerk; *Provided*, that no money shall be paid out of the city treasury for school purposes, except on a vote of a majority of the members of said board.

Board to have control of school fund.

§ 9. That the said trustees and visitors shall have superintendence of all the schools in said city organized and established under this act, and from time to time shall make such regulations for the government and instruction of the children therein as to them shall appear proper and expedient. They shall appoint and employ all teachers and instructors for the same, and fix their salaries. They shall at least every third year

To superintend schools, to make all rules and regulations.

To employ teachers,

and every three years make an enumeration of all children between 4 and 21 years of age.

To make a report at the close of the school year.

To establish such grades of schools as they may think proper.

Their power in relation to German schools.

Schools equally free and accessible to all white children

during the month of October cause to be taken an enumeration of all children between four and twenty-one years of age, residing in the several school districts, distinguishing in such enumeration the white from the colored children; and on or before the fifteenth day of November following, through their clerks, certify the same to the auditor of Hamilton county; and such enumeration shall, until another be taken, form the basis of the city portion, in the annual distribution of the State school fund. And the said board of trustees and visitors shall fix by resolution the school year of said schools, and determine the times and duration of all the vacations thereof; they shall provide for an annual examination of all said schools, and at the close of every school year, make and publish, for the information of the citizens, a report on the condition of the schools under their charge, as well as the fiscal and other concerns in relation thereunto, and a particular account of the administration thereof, and generally do and perform all matters and things pertaining to the duties of their said office which may be necessary and proper to promote the education, morals and good conduct of the children instructed in said schools.

§ 10. That the said trustees and visitors, for the purpose of better organizing and classifying the schools under their supervision, shall have power to establish and maintain, out of any fund under their control, such grades of schools, other than those already provided for, as may to them seem necessary and expedient for the above named purposes, and are hereby authorized to cause to be taught therein such other studies in addition to those taught in their district schools, and under such regulations as said trustees and visitors may from time to time prescribe. Provided, however, that said funds shall not be appropriated towards the establishment and maintenance of such other grade of schools so as in any wise to impair the efficiency and permanency of the common district schools of said city.

§ 11. That it shall be the duty of said board of trustees and visitors of common schools to provide a suitable number of German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together. The said board may, when in their opinion the same shall be necessary, establish one or more German-English senior or principal departments, the transfers to which shall be made irrespective of the districts established for English schools, and the schools provided for in this section shall be subject to such regulations as said board may adopt for the government thereof, and also subject to the proviso contained in the tenth section of this act.

§ 12. That the common schools in the several districts of the city, and all other grades of schools authorized or established and maintained in whole or in part from the school

funds of said city, shall at all times be equally free and accessible to all white children not less than six years of age who may reside in said city, and subject only to such regulations for their admission, government and instruction, as the trustees and visitors may from time to time provide. Provided, that nothing in this act shall be construed so as to interfere with or interrupt the public high schools in said city as now established and organized.

§ 13. The said trustees and visitors may provide a suitable number of evening schools, during the fall and winter months, for the instruction of such youth, over ten years of age, as are prevented by their daily avocations from attending day schools, which schools shall be subject to such regulations as said board may from time to time adopt.

Board may establish evening schools.

§ 14. There shall be a board of examiners composed of seven members, and at the expiration of the respective terms of those now in office, the said board of trustees and visitors shall appoint for the term of three years, suitable persons, residents and citizens of said city, of competent learning and abilities, as examiners of said schools and of the qualifications of teachers thereof, which examiners, when organized by the election of a president, shall constitute and be denominated the "Board of Examiners" of common schools in Cincinnati, and all vacancies which may occur in said board, shall be filled by said trustees and visitors. It shall be the duty of said board of examiners to meet at least once in every month, to examine the qualifications, competency and moral character of all persons desirous of becoming teachers and instructors in said schools, as well with reference to their methods of instruction and mode of government as literary attainments, and any four members of said board shall have power to grant certificates thereof to such persons as in their opinion shall be entitled to receive the same, and no person shall be employed and paid, directly or indirectly, as teacher or instructor in any of said schools, until he or she shall have obtained from said board of examiners, a certificate of qualifications as to his or her competency and moral character.

Board of examiners.

§ 15. And the said board of trustees and visitors shall have power to contract for the sale of any real estate held by said city for school purposes, which they may deem unsuitable for such purpose, and upon their certifying such fact to the city council, and if said city council approve such sale, they shall direct the proper city officers to execute on behalf of said city, a good and sufficient deed for the property so contracted to be sold, and the proceeds of such sale shall be placed to the credit of the school funds.

How trustees and visitors may sell school property.

§ 16. All fines and penalties that may be received or collected under the provisions of any law levying a tax on sales at auction, and all fines collected under the city ordinances not appropriated by law, are hereby appropriated to the use, benefit and support of the common schools in the city of Cin-

Certain fines &c., expended for school purposes.

cinnati, and it is hereby made the duty of the treasurer of Hamilton county and the mayor of said city, to pay the same into the city treasury, for school purposes.

Schools for
colored chil-
dren.

§ 17. The property of all colored persons in said city, shall be listed and taxed for school purposes in the same manner as the property of other persons, and separate schools shall be established for the education of the colored children of said city, in such districts as the board of trustees and visitors of common schools shall select for that purpose. The school so established shall be under the management and control of said board, and so much of the school funds of said city, as upon an equal distribution of the same per capita under any enumeration required by this act, would fall to the share of the colored children of said city, shall be appropriated as a fund, subject to the order of said board, for the support of schools for colored children.

Acts repealed.

§ 18. That the act entitled an act supplementary to an act to increase the number of trustees and visitors of common schools in the city of Cincinnati, and for other purposes, passed March 7th, 1837, passed March 12, 1845, the act entitled an act to authorize the city council of Cincinnati to levy taxes for school purposes, passed February 8, 1847; the act entitled an act to authorize the appointment of a superintendent of common schools in Cincinnati, and for other purposes, passed March 23, 1850; section one of the act entitled an act for the better organization and classification of the common schools of Cincinnati and Dayton, and for other purposes, passed February 11, 1845, so far as the same relates to the common schools of the city of Cincinnati, and the act entitled an act to authorize the establishment of separate schools for the education of colored children, and for other purposes, passed February 10, 1849, so far as the same relates to schools for colored children in the city of Cincinnati—be and they are hereby repealed.

When act to
take effect.

§ 19. That this act shall take effect and be in force from and after the 15th day of March, A. D. 1853.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 27, 1853.

SECRETARY OF STATE'S OFFICE,

COLUMBUS, OHIO, May 1, 1853.

I hereby certify that the foregoing acts are true copies of the original rolls now on file in this office.

WILLIAM TREVITT,

Secretary of State.

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AN ACT

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§ 1. *Be it enacted by the General Assembly of the State of Ohio, That the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, and eleventh sections of the act entitled "an act to authorize the Commissioners of Jackson county, to subscribe to the stock of the Iron railroad company, one hundred thousand dollars, and for other purposes," passed March 7th, 1850, be and the same are hereby repealed.*

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 19, 1853.

AN ACT

To provide for filling vacancies that may happen by death, resignation, or removal, in the Board of Trustees for managing lands granted for religious purposes, in the County of Washington.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That all vacancies that now exist, or that may hereafter happen by the death, resignation, or removal from office, of any of the trustees for the management of lands granted for religious purposes, in the County of Washington, shall be filed by the Court of Common Pleas of said County.*

§ 2. *That whenever said court shall be duly notified that a vacancy has happened in said board of trustees, it shall appoint some suitable person to fill such vacancy, and a record of such appointment shall be made upon the journal of the Court.*

§ 3. *That said Court of Common Pleas shall have power to remove any of said trustees upon proof of a breach of trust, or misconduct in office.*

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 1, 1853.

AN ACT

To authorize the sale of the School Lands belonging to the French Grant, in the County of Scioto.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the lands selected by the Secretary of the Treasury of the United States, for the support of schools within that tract of country, usually called the French Grant, in the county of Scioto, in pursuance of an act of Congress, approved May twentieth, one thousand eight hundred and twenty-six, may be sold, and such sale shall be regulated by, and conducted according to the provisions of the act entitled "An Act to regulate the sale of School Lands, and the surrender of permanent leases thereto," passed April thirteenth, one thousand eight hundred and fifty-two, except as provided in the following sections of this act.

§ 2. The Trustees of Green township, in the county of Scioto, are hereby authorized and empowered to perform, all and several, the duties and acts, in regard to said lands and the sale thereof, which, by the provisions of the act aforesaid, might be done and performed by the Trustees of any original surveyed township, in regard to lands belonging to such original surveyed township.

§ 3. In construing the act of April thirteenth aforesaid, for the purposes herein contemplated, all the provisions thereof, in regard to original surveyed townships, shall be held to apply to the township of Green aforesaid, precisely as if the words township of Green were substituted in place of the words "original surveyed township."

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 15, 1853.

AN ACT

To further extend the time of payment of the principal for School Lands in Springfield township, Lucas county.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That a further period of five years from the day on which the respective instalments fall due, under the act of March 12, 1849, be and the same is hereby given to the purchasers of school section sixteen, in Springfield township, Lucas county, for the payment of the principal of such: provided the interest shall be punctually paid in the manner pointed out in the act authorizing the sale of said section sixteen.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 19, 1853.

AN ACT

To provide for the payment of debts on the Ripley and Hillsborough, and Milford and Chillicothe turnpike roads.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That the presidents and directors of the Ripley and Hillsborough, and the Milford and Chillicothe turnpike road companies be, and they are hereby authorized to appropriate all the tolls now on hands or that may be hereafter received on said roads, after deducting all necessary expenses of repairs, and other incidental expenses connected with the collecting and disbursing the tolls, repairs and managing the road as far as may be necessary, to the payment of the debts of said road, incurred in the construction thereof, previous to the first of March, one thousand eight hundred and forty-three, and which in part, yet remain unpaid.*

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 2, 1853.

AN ACT

To provide for the removal of the county seat of Perry County, Ohio, from the town of New Lexington to the town of Somerset, in said County.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That from and after the taking effect of this act as hereinafter provided, the seat of justice in the county of Perry shall be removed from the town of New Lexington, and shall be permanently fixed until otherwise provided by law, at the town of Somerset in said county.*

§ 2. That this act shall take effect and be in force when, and so soon as the same shall be adopted by a majority of all the electors of said Perry county voting at the next general election, after the passage thereof, as hereinafter provided.

§ 3. That the electors of said Perry county at the next general election after the passage of this act, shall endorse on their tickets either the words "for removal" or "against removal"; and if a majority of all the electors of said Perry county voting at said election shall vote "for removal," this act shall thereupon be considered and holden to be adopted by such majority.

§ 4. That the judges and clerks of the elections in the several townships in said county, at the said election, shall cause all the votes so to be given "for removal" or "against removal" to be regularly and

fairly counted, and entered in the usual forms for certifying the returns of elections, and to certify and return the same, together with a poll book of the electors voting at said election to the Clerk of the Court of Common Pleas of said county, and said clerk shall after said returns are made to him, without any unnecessary delay open the same, in the presence of the Probate Judge, or sheriff of said county, and count up the whole number of votes "for removal" and the whole number "against removal" in each and all of the townships in said county, and shall make, certify and place on file in his office, correct abstracts of the returns from all of the townships in the county showing the number in gross of all votes "for removal" and of all votes "against removal," and said clerk shall cause a copy of said certificate to be published in some newspaper of general circulation in said county, and a copy of said notice shall also be entered upon the record of the proceedings of the Court of Common Pleas of said county, at the next or some succeeding term of said court after said election, which record shall be taken and received as legal evidence for all purposes, of the result of said voting.

§ 5. If a majority of said electors of said county voting at said election as hereinbefore provided shall vote against removal, then all obligations heretofore given to the commissioners of said county in accordance with the sixth section of an act entitled "an act referring to the voters of Perry county the question of a removal of the seat of justice of said county," passed March 22d, 1851, to secure to be paid to the commissioners of said county a sufficient sum of money to erect suitable county buildings in the town of New Lexington, shall be, by said commissioners delivered up to be cancelled and the commissioners shall proceed at once to levy a tax sufficient to erect a court house, jail and offices for said county, in the town of New Lexington, which court house, jail and offices shall in the aggregate cost not less than sixteen thousand dollars.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 2, 1853.

AN ACT

To divide the township of Salem, in Warren county, into two election precincts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That* the township of Salem, in the county of Warren, is hereby divided into two election precincts to be denominated the eastern and western precincts of Salem township, the boundary line between said precincts to be as follows, to-wit: Commencing at a point on the west bank of Todd's Fork, where it intersects the line dividing the townships of Salem

and Washington in said county, thence down Todd's Fork with the meanders thereof to the mouth of Second Creek, thence on a straight line to the mouth of Wolf Run, thence up said run to the forks thereof, thence up the west forks of said run to a line that divides lands of Robert C. Schurts and Allison Mounts; thence south-west to the line dividing the townships of Salem and Hamilton in said county, including the lands owned by William Carroll in said western precinct; the place of holding elections in said western precinct is hereby fixed at the town of Morrow in said township of Salem.

§ 2. It shall be the duty of the trustees of said township to give twenty days' notice of the time and place of holding elections in the precincts of said township, by posting up written or printed advertisements in such number of places as to them shall seem proper for the general information of the electors of said precinct.

§ 3. In all elections for State, county or township offices held in the precincts of said township, it shall be the duty of any trustee, or trustees of said township, to act as judge, or judges of election in the precinct in which such trustee, or trustees may reside, and the township clerk shall act as one of the clerks of all elections held as aforesaid, in the precinct in which he may reside, and other judges and clerks shall be chosen viva voce by the electors of the precinct where they may reside; but no person shall be chosen judge, or clerk, of any election, who is not a qualified elector of the precinct in which such election may be held.

§ 4. In all elections for township offices for the said township of Salem, the returns of such elections shall be made to the township clerk of said township, within three days after the day on which such election is held.

§ 5. It shall be the duty of the judge and clerk who may be chosen, previous to entering upon the discharge of their respective duties, and before receiving any votes at any election held within any precinct, each to take an oath or affirmation, as provided for in the general act regulating elections, and be governed in all respects in the discharge of their duties as judges of elections, by the provisions of any general law now in force, or that may be hereafter enacted.

§ 6. The judges and the clerks appointed by the judges, shall be governed in their election returns, and the charge of the ballot box, by the provisions of the before recited acts, and shall receive the same compensation for their services as is allowed to judges and clerks of elections by law.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 10th, 1853.

AN ACT

Further to amend the act entitled "an act to incorporate the Columbus, Winchester, Jefferson and Carroll Road Company," passed March 25, 1841, and to repeal the third section of an act amendatory thereto, passed March 8, 1850.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That* if, in constructing the road authorized by this act to which this is amendatory, any person shall claim of the said Columbus, Winchester, Jefferson and Carroll Road Company compensation for right of way or for materials for said road, said company may institute and prosecute proceedings against such person or persons under the "act to provide for compensation to owners of private property appropriated to the use of corporations," passed April thirtieth, one thousand eight hundred and fifty-two.

§ 2. That whenever any judgment shall be rendered by the Probate Judge of any county in any proceedings authorized by the first section of this act, it shall be his duty to make out and file with the commissioners of the county abstracts of said judgments, including the costs, and if the commissioners shall be of opinion that the road will be of sufficient importance to the public they shall cause the judgments and costs, certified as aforesaid to be paid to the persons entitled to the same, out of the county treasury; but if the commissioners be of opinion that the judgments and costs ought not to be paid out of the county treasury they may refuse to pay the same, in which case it shall be lawful for the persons interested to pay the damages, and when damages and costs are paid as provided for by this section, the company shall be authorized to enter upon and improve said road.

§ 3. That the third section of the act entitled "an act to amend an act to incorporate the Columbus, Winchester, Jefferson and Carroll Road Company," passed March 8, 1850, be, and the same is hereby repealed.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

Authorizing the treasurer of Miami county to issue scrip to tax-payers in certain cases.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That* the treasurer of Miami county is hereby authorized and required to issue to any tax-payer in said county if demanded by the proper person within eighteen months after the payment of such tax any certificate or scrip which such tax-payer has been entitled to by law for the payment of any Railroad tax levied in said county.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

To authorize the Treasurer of Knox county to pay out certain moneys collected under the act "To lay out and establish the Mount Vernon, Bennington and Delaware Turnpike Road," passed February twenty-five, one thousand eight hundred and forty-eight.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the Treasurer of Knox county is hereby authorized and required to pay out all moneys remaining in the Treasury, collected under the act to lay out and establish the Mount Vernon, Bennington and Delaware Turnpike Road, passed February twenty-five, one thousand eight hundred and forty-eight, and repealed January twenty-six, one thousand eight hundred and fifty, in the following manner:

§ 2. Haughrey Sherwood is hereby appointed commissioner to receive and lay out in the improvement of said road all such money as he shall receive from the Treasury in the same manner as if the act to lay out and establish said road had not been repealed.

§ 3. If the commissioner named in the second section of this act shall refuse to serve, or from any other cause said commission shall be vacant, the commissioners of the county upon petition of the persons interested shall appoint some suitable person to fill such vacancy, and who shall give bond and security to said commissioners for the faithful performance of the duties required by this act.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Dividing McLean township, in Shelby county, into two Election Precincts.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the township of McLean, in the county of Shelby, is hereby divided into two election precincts, to be denominated the Northern and Southern precincts of McLean township; the boundary line to be as follows, to-wit: all that part of said township lying north of the county road, commencing at the town of Minster, in the county of Auglaize, and running east, dividing sections thirty and thirty-one, and sections twenty-nine and thirty-two, in said McLean township, shall be known as the northern precinct of McLean township; and all that part of said township lying south of said county road, shall be known and designated as the southern precinct of McLean township.

§ 2. It shall be the duty of the trustees of said township to give twenty days' notice of the time and place of holding elections in the precincts of said township by posting up written or printed advertisements in such number of places as to them shall seem proper for the general information of the electors of said precincts.

§ 3. In all elections for State, county, or township officers held in the precincts of said township, it shall be the duty of any trustee, or trustees of said township, to act as judge, or judges of election in the precinct in which such judge, or judges may reside, and the township clerk shall act as one of the clerks of all elections held as aforesaid, in the precinct in which he may reside, and other judges and clerks shall be elected viva voce by the electors of the precinct where they may reside; but no person shall be chosen judge, or clerk, of any election, who is not a qualified elector in the precinct in which such election may be held.

§ 4. In all elections for township officers in said township of McLean, the returns of such elections shall be made to the township clerk of said township, within three days after the day on which such election is held.

§ 5. It shall be the duty of the judges and clerks who may be chosen, previous to entering upon the discharge of their respective duties, and before receiving any votes, each to take an oath, or affirmation, as provided for in the general act regulating elections, and be governed in all respects in the discharge of their duties as judges of elections, by the provisions of any general law now in force, or that may be hereafter enacted.

§ 6. The judges and clerks appointed, shall be governed in their election returns, and the charge of the ballot box, by the provisions of the before recited acts, and shall receive the same compensation for their services as is allowed to judges and clerks of elections by law.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

To authorize the District Court of Ohio to receive the application, and admit Otho H. Vossler and Alpheus Hurd to practice as Attorneys and Counsellors at law and Solicitors in Chancery, in the several Courts of Record in this State.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That it shall be lawful for the District Court of the State of Ohio, in any district of this State, at any time before the twenty-first day of December, in the year eighteen hundred and fifty-five, to receive the application of Otho H. Vossler, an alien, and now a resident of Hamilton county, in*

this State, to be admitted to practice as an Attorney and Counsellor at law and Solicitor in Chancery in the several Courts of Record in this State, and to act upon said application as though said Otho H. Vossler were a citizen of the United States, and of the State of Ohio.

§ 2. That if said Otho H. Vossler shall be admitted to practice as an Attorney and Counsellor at law and Solicitor in Chancery in the several Courts of Record in this State, before he shall have become a citizen of the United States, and if he neglect to become a citizen of the United States, until after the twenty-first day of December, in the year eighteen hundred and fifty-five, his license to practice as an Attorney and Counsellor at law and Solicitor in Chancery in the several Courts of Record in this State, shall cease, and be null and void.

§ 3. The District Court aforesaid shall have power within the same limitations and restrictions, and subject to the same conditions as provided in the foregoing sections in respect to the said Otho H. Vossler to receive the application of Alpheus Hurd, an alien, now resident in the county of Franklin, in this State, to be admitted to practice as an Attorney and Counsellor at law and Solicitor in Chancery in the several Courts of Record in this State, and to act upon said application as though said Alpheus Hurd were a citizen of the United States, and of this State, provided, that if he shall neglect to become a citizen of the United States until after five years from the date of his license to practice in the Courts of this State, as aforesaid then his said license shall cease and become null and void.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

For the surrender of the Warren County Canal.

§ 1. *Be it enacted by the General Asssmbly of the State of Ohio,* That the board of public works is hereby directed to make no further expenditure in the repair of the Warren county Canal.

§ 2. That said board be, and they are hereby authorized to sell and transfer said canal, or any part thereof, or any water power or other property pertaining to said canal upon such terms as in the opinion of the board will be most advantageous to the State, and to take releases of claims against the State, and to make releases of claims of the State on said canal, and if they think that justice and equity demand the same, to turn Shaker Creek into its original channel when that portion of the canal is disposed of; provided, that by such sale, transfer or release the State shall not incur any debt or liability for damage in any way or manner whatever.

§ 3. That the canal laws of this State now in force, and such as may be enacted for the preservation of the canals of this State, shall protect and govern said canal, or so much thereof as shall be released by the board of public works and all of said canal in which the State has a contingent interest and all offences against such parts of said canal as may still remain the property of the State, or in which the State has a contingent interest shall be punished in the same manner that like offences now are or may be punished by the laws of this State for the protection of the canals.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

AN ACT

Supplementary to the act entitled "an act authorizing the sale of lands granted by Congress, for the support of religion within the Ohio Company's purchase," passed March 3, 1834.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the benefit of the provisions of the said "act authorizing the sale of lands granted by Congress, for the support of religion within the Ohio Company's purchase," passed March third, one thousand eight hundred and thirty-four, for the surrender of leases, and the sale and purchase, in fee, of such lands, by and to the lessees thereof, and their assignees, be, and the same are hereby extended to all assignees and owners of parts of lots, and parcels of section twenty-nine, in township two, range eight, of the Ohio Company's purchase, held by or under lease or leases, from and under the "trustees for managing lands granted for religious purposes, in the county of Washington, within the Ohio Company's purchase," on the same terms and conditions of purchase, payment and conveyance, by and to the assignees and owners of parts of lots, and demised premises, as are provided in the said act for lessees and their assignees; such surrender, by the assignee or owner, of a part of a lot or parcel, to be made, and a certificate of purchase to be obtained, in the mode hereinafter provided; and the sum or price to be paid, for any such part or parts of a lot, or parcel so demised by the assignee or owner thereof, who shall apply for a purchase, shall be ascertained and determined by a just estimate or proportion of the value of such part or parts to the value of the whole lot or parcel demised by the original lease, as the same shall have been last legally made or fixed before the passage of this act, or by the estimate of the value of such part or parts, as such, by the said board of trustees last before the time aforesaid.

§ 2. That any person or persons, being the assignee or assignees, owner or owners of any such part or parts of a lot or parcel of land, in

the said section twenty-nine, of township two, range eight, demised by the said trustees, who may wish to make such surrender and purchase, may file his, her, or their petition, in and to the court of common pleas for the county of Washington, therein stating and describing the premises, the part or parts of the lot or lots, and ground proposed to be surrendered and purchased as aforesaid, and the title or claim of right, whereby he, she, or they holds or hold, or claims or claim, the same, accompanied by all proper and necessary exhibits and evidences, in support and verification of such title or claim, to which petition the said board of trustees, by their clerk or secretary, (to be brought into court by citation or voluntary appearance) shall be made a defendant, and such petitioner or petitioners may likewise make any other person or persons defendant or defendants, to the petition, in any case in which it may be necessary, on account of a doubt, uncertainty or conflict of title or right to the premises described, and for which the application is made, in and by the petition, in order to settle such matter or question of right or title to the premises in question; and the said court shall, on such party or parties being duly in court, by citation or otherwise, proceed, without further delay, or at such time as it may appoint, at its discretion, to hear, examine and consider the matter of the petition and application, may make any and all necessary order or orders for ascertaining and determining, as well the description and quantity of the part or parts of the lot or lots proposed by the petition to be surrendered and purchased as aforesaid, as the value and price thereof, and the sum to be paid therefor, according to the terms fixed by this act, and the act to which this is supplementary, and may also proceed to examine, hear, consider and adjust, by all and any proper and necessary orders or decree, according to the principles of law and equity, any doubt, uncertainty or imperfection of title or right which may be presented or arise, as to the matter of the petition and the right or rights of the petitioner or petitioners to surrender and purchase the premises so proposed to that end by the petitioner, and the said court on being satisfied of the right and title of the petitioner as assignee or owner in and to the premises so proposed to be surrendered and purchased, or having adjusted and settled the same by its orders and decree to that effect and in affirmance of such right shall, (unless some valid legal and insuperable objection, affecting the rights and use of the beneficiaries of the trust in and to the fund arising from the same shall be interposed by the said trustees) order and direct a certificate of purchase substantially in accordance with the certificate for the like purpose provided for by the act to which this is a supplement, to be entered, made and issued to the petitioner or petitioners, which certificate, when issued, shall be as effectual to, and confer all the rights upon the party or parties to whom the same shall be so ordered and issued as the certificate for the same purpose of the county auditor under the provisions of the said act to which this is supplementary, and the court may make such order or orders, in respect to the payment of the costs of such petition and the matters arising thereunder as to it shall seem just and equitable: *Provided*, that before the issuing of any such certificate all arrears of rent, if any due on the demised premises, shall be paid or adjusted to and with the said trustees or their treasurer

for the time being, and provided further that the said corporation, viz: the said trustees, may by general order entered upon their minutes, or in each and any instance of application under this act or that to which this is a supplement, to surrender and purchase any of such lands, express their assent by their clerk in writing to such surrender and purchase.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

AN ACT

To authorize the commissioners of the counties of Lucas, Fulton and Williams in the State of Ohio, to appoint suitable persons to transcribe the records of certain deeds and mortgages in the counties of Monroe, Lenawee and Hillsdale in the State of Michigan and to legalize said transcript.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That the respective boards of county commissioners of the counties of Lucas, Fulton and Williams in the State of Ohio, be and they are hereby authorized and required to appoint some suitable person in each of their counties respectively to transcribe from the records of deeds and mortgages in the counties of Monroe, Lenawee and Hillsdale in the State of Michigan, all deeds and mortgages recorded in said counties in the State of Michigan relating to or affecting lands lying and now included within either of said counties of Lucas, Fulton or Williams.

§ 2. That the persons appointed under the first section of this act shall receive from their respective county auditors, certificates of such appointment and before entering upon their duties shall take and subscribe an oath or affirmation faithfully and correctly to transcribe said deeds and mortgages, which oath or affirmation shall be reduced to writing and filed in the Recorder's office of the proper county.

§ 3. That the deeds and mortgages so to be transcribed as aforesaid, shall be copied into suitable books to be provided for that purpose, and, when so transcribed shall be carefully compared, indexed and certified to by the person transcribing the same and the record so transcribed shall be deposited in the Recorder's office of the proper county, and such transcribed record shall have the same force and effect in law, as if originally recorded in this State in the manner prescribed by law. And the persons so transcribing such records shall be paid from their respective county treasuries such compensation for their services as the commissioners shall consider just and reasonable.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

To repeal the act entitled "an act to incorporate the Columbus and Olentangy Turnpike or Plankroad Company," passed March 11, 1851.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That the act entitled "an act to incorporate the Columbus and Olentangy Turnpike or Plankroad Company," passed March 11, 1851, be and the same is hereby repealed.*

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To repeal an act entitled "An act to incorporate the Western Fire Engine and Hose Company of Cincinnati," passed January 21st, A. D., 1842.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That an act entitled "An act to incorporate the Western Fire Engine and Hose Company of Cincinnati," passed on the 21st day of January, in the year one thousand eight hundred and forty-two, be, and the same is hereby repealed.*

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

AN ACT

To authorize the Court of Common Pleas of Defiance county to appoint a successor to carry into effect contracts for sales of real estate, made by Eliza Holgate for minor heirs of Curtis Holgate, deceased.

§ 1. *Be it enacted by the General Assembly of the State of Ohio, That the court of common pleas of Defiance county is hereby authorized on petition of any person interested, to appoint some suitable person to*

carry into effect any and all contracts entered into by Eliza Holgate, late of Defiance county, on behalf of the minor heirs of Curtis Holgate, deceased, under the provisions of an act entitled "an act to authorize Eliza Holgate to convey real estate for her children," passed March fourth, one thousand eight hundred and forty-five.

§ 2. That the person so appointed by said court under the first section of this act, shall have the same power and authority to execute deeds and conveyances, to sue for and receive the purchase money due on such contracts, and to do and perform all other acts necessary to carry such contracts into effect, as the said Eliza Holgate might do under the provisions of the aforesaid act if still living, and the court shall require such bond and security for the faithful discharge of the duties of such appointment as shall be reasonable.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

AN ACT

To authorize and empower the Commissioners of Hardin County to borrow money for the erection of a Court House and Jail.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That the county commissioners of the county of Hardin are hereby authorized and empowered, if they shall deem it necessary, to borrow any sum of money not exceeding twenty thousand dollars, for the purpose of erecting and finishing, in said county, a court house and jail, for which said loan the said commissioners and their successors in office may issue such certificates or bonds as may be agreed upon between them and the person or persons, body or bodies corporate, with whom or of which such loan or any part thereof may be contracted, bearing interest at a rate not exceeding seven per cent per annum, and redeemable at such time and place as the said county commissioners may designate on the face of such certificate or bonds.

§ 2. That, for the payment of the interest annually on such bonds and the final redemption of the principal of such loan, the said county commissioners are authorized to levy a tax in addition to any tax which may be authorized to be levied for county purposes, not exceeding one-half of the county tax aforesaid, and such additional tax shall be levied and assessed on the same kind of property which may be charged for any county tax,

and added to and collected with such county tax, by authority of the same duplicate, in the same manner and within the same time that said county tax may be collected.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

AN ACT

To provide for the purchase of property and the erection of a Work House in Hamilton County.

§ 1. *Be it enacted by the General Assembly of the State of Ohio*, That for the purpose of enabling the commissioners of Hamilton county to purchase property for the use of said county, and to erect a work house, the said commissioners are hereby authorized to borrow any sum not exceeding fifty thousand dollars, at a rate of interest not exceeding six per cent. per annum, and the said commissioners may borrow the said money in such sum or sums, from such person or persons, body or bodies corporate, and for such length of time not exceeding thirty years, as they may deem proper, for which they, the said commissioners, may issue such certificates as may be agreed upon between them and the person or persons, body or bodies corporate with whom or which such loan or any part thereof may be contracted, and the said commissioners shall provide for the payment of the interest on the said loan, and for the final redemption of the debt within the period for which the same may be contracted for, and for that purpose may pledge the property, revenues and faith of the said county in such manner, and upon such terms and conditions as may be necessary and proper to consummate the said loan.

§ 2. That said work shall be constructed of such material, and shall be of such demensions and shall be located in such place as said commissioners shall direct. The said commissioners are hereby authorized to plan and project such work-house, and to purchase or condemn for the use of the county such grounds as they may deem necessary, whereon to erect the work-house aforesaid, or other public buildings necessary to be erected for the use of the county. And whenever it becomes necessary for the purposes herein recited, to vacate any street or streets, alley or alleys, of the city of Cincinnati, said commissioners shall proceed in the manner prescribed by the act to provide for the vacation of town plats, and in lieu thereof may open such new street or streets, alley or alleys, as they may deem proper, and whenever the said commissioners deem expedient, they may proceed to sell and convey any

public building or buildings, or public grounds, and apply the proceeds arising from the sale thereof to the construction of new buildings or the purchase of other and more eligible sites and grounds; Provided nothing in this section shall be so construed as to authorize the aforesaid commissioners to purchase or condemn ground for any other purpose than a work-house.

§ 3. That in case it shall become necessary for the purposes hereinbefore recited to condemn private property, the said commissioners shall proceed in the manner prescribed by the act entitled "An act to provide for compensation to owners of private property appropriated to the use of corporations," passed April thirtieth, eighteen hundred and fifty-two.

§ 4. That if the city of Cincinnati at any time hereafter should be erected into a county, then and in that case all property purchased by said commissioners, under the provisions of said act, with the buildings thereon, shall become the property of said city and county of Cincinnati: Provided that all moneys paid on account of said property by tax-payers outside of the corporate limits of said city and county of Cincinnati shall, by said city and county of Cincinnati, be repaid into the county treasury for the use of the remainder of the county, to be applied for procuring such public grounds and for erecting such public buildings as they may think proper, and the auditor of the county of Hamilton is hereby required to keep a strict account of all moneys so to be returned.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

Enabling the Lessees of Section No. 29, Town 5, Range 3, in Warren County, Ohio, to surrender their respective leases and purchase the fee simple of the lands so leased.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for any of the lessees of section 29, town 5, range 3, Warren county, Ohio, whether holding by original lease, by assignment or sublease, or in whatever other form, to surrender their respective leases, and purchase the fee simple of the lands so leased, in the same manner pointed out for the surrender and purchase of school lands by the provisions of the "Act to regulate the sale of school lands and the surrender of permanent leases thereto," passed April 16, 1852.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

AN ACT

Authorizing the Governor of this State to relinquish to the Steubenville, Cadiz and Cambridge Macadamized Road Company the interest of the State in said road.

§ 1. *Be it enacted by the General Assembly of the State of Ohio.* That so soon as the President of the Steubenville, Cadiz and Cambridge Macadamized Road Company shall file in the office of the Auditor of State a statement by said President, duly attested under oath, setting forth that the said company have resumed active operations in the construction of their road, and have actually employed labor for the purpose of constructing not less than five miles thereof; then and in that case it shall be the duty of the Governor of this State to prepare and deliver to said President a certificate, setting forth the relinquishment, on the part of the State, of any in or claim to any part of capital stock of said company whatever.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate, pro tempore.

March 14, 1853.

AN ACT

To authorize the construction of a Turnpike Road upon the unfinished part of the "Cumberland Road," in the State of Ohio.

§ 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for turnpike companies, as provided by this act, which shall hereafter organize, under the laws of this State, for the purpose of constructing a turnpike road upon and along the line of the unfinished part of the Cumberland Road, from the city of Springfield, in the county of Clark, to the western line of this State, to enter upon, take possession of, hold and use, for the purposes herein provided, all the property, interest and title, within the limits of the county in which such company is organized, which this State holds or owns in said portion of said road, by and under the act of Congress approved January the twentieth, A. D. 1853, whether such property or interest of this State is in lands, bridges, culverts, embankments, right of way, or any other thing whatever.

§ 2. That any turnpike company which may avail itself of the provisions of this act, shall take and hold the property named in the first section of this act, for the purpose of making and maintaining a turnpike road upon the line of said part of said Cumberland Road and for no other: That any company organized for the purpose of completing any part of said Cumberland Road, shall designate the county in which such company proposes to complete said road, and no one company shall extend the line of its road into

more than one county; and any turnpike company organized for the purpose of completing said road within the limits of Clark county, shall complete the same to the western line of said county within four years from its organization, or at the end of four years after its organization lose all rights to take tolls upon that part completed until the same shall be so completed to the western line of said county; and any company organized to complete that part of said road in Clark county, shall open books for stock within four months from its organization, or lose all rights to the provisions and privileges of this act; Provided that any company organized to make any part of said road within Clark county, shall not have any right to adopt as its western terminus any point east of the west line of Clark county.

§ 3. That in no event shall the State, by reason of the privileges conferred by this act, become liable or bound to pay any damages to any person whomsoever, resulting from the abandonment of said road by the United States, or from the privileges conferred by this act; but nothing in this act contained shall affect in any way the rights of any such persons, claiming damages for such injuries, as against the government of the United States or against any company availing itself of the provisions of this act.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

RESOLUTIONS.

JOINT RESOLUTIONS

Instructing our Senators and Representatives in Congress to distribute lands to actual settlers.

WHEREAS, it is the true policy of our Government to encourage the distribution of its public lands amongst its landless citizens, and to discourage the monopolizing of the same in the hands of speculators; and whereas, the time has arrived when the public lands belonging to the United States should cease to be a source of revenue to the General Government—
Therefore,

Resolved, by the General Assembly of the State of Ohio, That our Senators and Representatives in Congress be, and they are hereby requested, to secure, if possible, the passage of an act giving to each individual who will settle upon any of the public lands and improve the same, one hundred and sixty acres thereof, at the actual cost to our government of surveying and locating the same; and from henceforth entirely abolishing the system of disposing of the public lands to non-residents at any price.

Resolved, That the Governor be requested to send a copy of this Preamble and Resolutions to each of our Senators and Representatives in Congress.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 6, 1852.

JOINT RESOLUTION

Relative to authorizing the Secretary of State to cancel the bonds of J. W. Gray, for the performance of certain contracts.

Resolved, by the General Assembly of the State of Ohio, That the Secretary of State is hereby authorized to cancel the bonds of J. W. Gray,

given for the faithful performance of contracts six and seven, under the provisions of "An act to provide for the State Printing," passed April 16, 1852, and to award said contract to the next lowest bidder therefor, who will comply with all the provisions of said act.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 11, 1852.

JOINT RESOLUTION

Relative to damages sustained by Geo. B. Holt, in the construction of the Mercer County Reservoir.

WHEREAS, this General Assembly, in April last, passed a joint resolution directing the Board of Public Works to cause a review and assessment of the damages sustained by Geo. B. Holt, in the appropriation of one hundred and forty acres of land in the construction of the Mercer county Reservoir, the assessment of the appraisers to be reported to the General Assembly at its present session—Therefore,

Resolved, by the General Assembly of the State of Ohio, That the Board of Public Works be, and they are hereby requested, if said assessment has been made, to report the same forthwith to the General Assembly, with the accompanying papers.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 11, 1852.

JOINT RESOLUTION

Requiring the Commissioners of the State Library to distribute certain documents therein named.

Resolved, by the General Assembly of the State of Ohio, That the Commissioners of the State Library cause to be distributed fifty copies (five folio volumes to a set) of Documents, Legislative and Executive, of the Congress of the United States, in relation to the Public Lands, to June 15th, 1834, published by order of the Senate of the United States, as follows, to wit: One copy to each Senatorial District, to be deposited with the county

clerk of the most populous county in said district; one copy to the United States Land Office at Defiance, and one copy to the fourteen counties having the next largest population; Provided not more than two copies shall be distributed to any Senatorial District, and said documents shall be so distributed to the counties entitled thereto at the same time and in the same manner as the laws and journals.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

Filed in the Secretary of State's Office, Dec. 15, 1852.

JOINT RESOLUTION

Directing the State Librarian to allow Clerks in the Offices of the different Executive Departments of the State the privilege of the Library.

Resolved by the General Assembly of the State of Ohio, That the State Librarian be, and he is hereby directed to allow the clerks, assistant clerks, sergeants-at-arms and assistant sergeants-at-arms and reporters of both Houses of the General Assembly and the clerks in the offices of the different executive departments of the State the privilege of the Library.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 22, 1852.

JOINT RESOLUTION

Relative to the swamp and overflowed lands in the State of Ohio.

Resolved by the General Assembly of the State of Ohio, That the Governor is hereby authorized and directed to file in the office of the Auditor of State the certified list and diagram of swamp and overflowed lands selected for the State of Ohio, under the provisions of the act of Congress, approved September 28th, 1850, referred to in the executive message of December 2d, 1852, and it is hereby made the duty of the Auditor of State to cause a correct copy of said list to be recorded in a substantial book and filed in his said office; and it is further hereby made the duty of the Auditor of State to cause an accurate copy of said list and diagram to be made and transmitted to the office of the Register of the United States Land Office at Defiance Ohio.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

December 28, 1852.

JOINT RESOLUTION

Authorizing the Secretary of State to lease the old Penitentiary lot.

WHEREAS, The old Penitentiary lot situated in the city of Columbus, and claimed as the property of the State, is now the subject of litigation between the State of Ohio of the one part and the heirs of the late Lyne Starling of the other part. And whereas, the said property is in a condition to yield an income in the way of rent, but which cannot be leased for the want of competent authority to make such contract, Therefore, be it

Resolved by the General Assembly of the State of Ohio, That the Secretary of State be, and he is hereby authorized to rent or lease the said property to such person or persons and for such time and for such compensation as he may see proper: Provided, that the written consent so to do is first obtained of the heirs of the said Lyne Starling or their attorneys.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

December 28, 1852.

JOINT RESOLUTION

Relative to Constitutional Debates.

Resolved, by the General Assembly of the State of Ohio, That the State Librarian be required to retain in the Library for the use of the General Assembly, and subject to the order of either House for the use of the members during the session thereof, one hundred and fifty copies of the Debates of the Convention for the revival of the Constitution of this State. Resolved further, that the Governor be, and he is hereby authorized and directed to transmit to each of the Governors of the several States of this Union for the use of said States, one copy of the aforesaid Debates to be taken from those that remain after retaining the number aforesaid in the Library; Resolved further, that the Secretary of State be, and he is hereby authorized and directed to furnish one copy of the Debates aforesaid and now belonging to the State to each of the following officers namely: the Judges of the Supreme, Common Pleas and Probate Courts, the Judge of the Criminal Court of Hamilton County, the Clerks of the respective counties; each of the officers aforesaid receiving a copy as above shall be required to deliver the same to his successor in office, and the same to remain the property of the State, said copies

to be forwarded to their proper destination with the laws, journals and legislative documents.

The Secretary of State is further authorized and directed to furnish each University, College, Academy and permanent High School, having a Library connected therewith, (upon the application of the proper agent of the same made at his office,) one copy each; provided, there shall be copies sufficient belonging to the State for said Schools, after the Officers, Universities, Colleges, Academies and Governors of State, be supplied; provided further, that said application be made by said agent within one year from the passage thereof.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

JOINT RESOLUTION

Granting the north room in the State Library to the Judges of the Supreme Court.

Resolved, by the Senate and House of Representatives of the State of Ohio, That the Judges of the Supreme Court of Ohio during the sessions of said court hereafter to be holden in Columbus be entitled to the free use and occupancy of the north room of the State Library, known as the law library room, and that the State Librarian be, and he is hereby required properly to arrange and prepare the same for a consultation room for the use of said court.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 12, 1853.

JOINT RESOLUTION

Requesting the Printers of the Senate and House to furnish State Officers with proof sheets of their Reports.

Resolved, by the General Assembly of the State of Ohio, That the Printers to the Senate and House be, and they are hereby requested to furnish to the State Officers proof sheets of all reports by them made and sent to such Printer for publication.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 19, 1853.

JOINT RESOLUTION

Relative to printing the Reports of the several Public Institutions of Ohio.

Resolved, by the General Assembly of the State of Ohio, That there be printed for distribution the following number of copies of the following named reports: three thousand copies of the report of the State House Commissioners; six thousand copies of the report of the Trustees and Superintendent of the Deaf and Dumb Asylum; six thousand copies of the report of the Trustees and Superintendent of the Blind Asylum; five thousand copies of the reports of the Warden and Directors of the Penitentiary; six thousand copies of the report of the Trustees and Superintendent of the Lunatic Asylum.

Resolved, That six hundred copies of each of the above named reports in addition be printed for the use of the officers making the same. And that all copies so ordered to be printed be covered with colored paper.

Resolved, That twelve per centum of each of the above named reports, except the report of the State House Commissioners be printed in the German language.

Resolved, That for the purpose of carrying the above resolution into effect the Secretary of State is hereby authorized to contract with the lowest responsible bidder for the German Printing under the provisions of the act entitled "an act to provide for the State Printing," passed April 16, 1852, which Printer shall cause a translation to be made of such reports, and for which he shall be entitled to a reasonable compensation.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

January 19, 1853.

JOINT RESOLUTION

Requesting the Governor to suspend the signing and delivering of certain deeds for lands sold at Defiance.

Resolved, by the General Assembly of the State of Ohio, That the Governor be requested to suspend the signing and delivery of any deed or deeds to any person or persons for any and all lands sold at the State Land Office at Defiance on and after the first day of January, A. D., one thousand eight hundred and fifty-three, until a full investigation of the facts concerning alleged frauds in said sales can be made.

And be it further Resolved, That there be a committee of three on the part of the House and two on the part of the Senate, appointed to investigate into the alledged frauds who shall be authorized to send for persons and papers, examine all witnesses under oath and report to this General Assembly.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

January 27, 1853.

JOINT RESOLUTION

Instructing the Commissioners of the State Library to place at the disposal of the Governor for the purpose of exchanging with Mr. A. Vattemere, Minister of the Interior of France such number of copies of Legislative Journals, &c., as he may deem proper to exchange.

Resolved, by the General Assembly of the State of Ohio, That the Commissioners of the State Library be, and they are hereby instructed to place at the disposal of the Governor for the purpose of exchanging with Mr. Alexander Vattemere, the Minister of the Interior of France, at Paris, such copies of Legislative Journals, Laws, Reports and other public documents belonging to the State as he may deem proper to exchange: Provided, they have such copies belonging to the State in their possession, and that the Governor be authorized to appoint the said Alexander Vattemere an agent for the State of Ohio, to carry into effect the objects contemplated by this Resolution.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 9, 1853.

JOINT RESOLUTION

Relative to contracts, Nos. 6 and 13, of the Muskingham Improvement.

Resolved, by the General Assembly of the State of Ohio, That the Board of Public Works be, and they are hereby instructed to examine the settlements and final estimates on contracts Nos. 6 and 13 of the Muskingham Improvement, and report to the General Assembly at its next session the amount of money if any there be found due upon such examination to the contractors on said sections, agreeably to the true intent and meaning of said contracts.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 19, 1853.

JOINT RESOLUTION

In relation to the claim of J. O. Cram.

WHEREAS, The General Assembly of the State of Ohio did on the 27th day of February, eighteen hundred and forty nine, as appears by the Journals of the two Houses pass a joint resolution, authorizing the Board of Public Works to examine and adjust the claims of John O. Cram against the State, which said resolution was by some mistake or oversight not enrolled or signed by the Speakers of the two Houses, so as to become binding on said Board; Therefore,

Resolved, by the General Assembly of the State of Ohio, That the Board of Public of Public Works be, and they are hereby authorized to examine and adjust the claims of the said John O. Cram against the State in the same manner and to the same extent that the same might have been done by them had said resolution legally taken effect.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 19, 1853.

JOINT RESOLUTION

Directing the Trustees of the Benevolent Institutions to employ a Mechanic or Engineer to examine and report through said Trustees the expense of making certain repairs, &c., on the Lunatic Asylum.

Resolved, by the General Assembly of the State of Ohio, That the Trustees of the Public Benevolent Institutions be, and they are hereby required to cause to be made suitable estimates of the cost of the repairs necessary to place the several Institutions in their charge in a safe and comfortable condition, (the estimates for each Institution to be made separately,) and that they report to this General Assembly as soon as practicable.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

February 24, 1853.

JOINT RESOLUTION

Authorizing the Board of Public Works to enquire into the subject matter of the petition of John and William Van Buskirk, in reference to their hydraulic power at Newark, Licking county, Ohio.

Resolved, by the General Assembly of the State of Ohio, That the Board of Public Works be, and they are hereby authorized and required to examine into the subject matter of the petition of John and William Van Buskirk, relative to their hydraulic power at Newark, Licking county, Ohio, and report the result of such examination to the next General Assembly.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 2, 1853.

JOINT RESOLUTION

To authorize the Library Commissioners to compromise the claim against J. F. Desilver.

Resolved, by the General Assembly of the State of Ohio, That the Library Commissioners be, and they are hereby authorized and directed to compound with and settle the account of J. F. Desilver, due the State for books, &c., on the same terms that the other creditors of said Desilver may settle their demands with him.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 10th, 1853.

JOINT RESOLUTION

In relation to the claim of the State of Ohio upon the assets of the North American Trust and Banking Company of New York.

Resolved by the General Assembly of the State of Ohio, That the Attorney General be directed to institute and conduct such proceedings as he may deem necessary to recover the claim of the State of Ohio upon the

assets of the North American Trust and Banking Company of New York, and especially to secure the claim by mortgage against Ferris Pell and wife, and others, assigned to the late canal fund commissioners, by the said Trust and Banking Company, and that provisions be made in the general appropriation bill, as well for costs and fees of counsel already due by the State, as for costs, fees of counsel and other expenses to be incurred: Provided, that said attorney general be and he is hereby authorized to visit New York and personally examine into the matters involved in said suit, and if he thinks, after such examination, the interest of the State would be subserved thereby, he is hereby authorized to compromise said claim, or any part thereof, which, in his opinion, can be so compromised with advantage to the interests of the State.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 11, 1853.

JOINT RESOLUTION

Relative to the boundary line between Pennsylvania and Ohio.

WHEREAS, The boundary line between the State of Ohio and Pennsylvania was run and established without the erection of permanent monuments, and owing to the great lapse of time since the same was run and established, the same has become obliterated and difficult to ascertain, and that difficulties and litigation often occur in consequence thereof,

Therefore, be it resolved, by the General Assembly of the State of Ohio, That the governor is requested to correspond with the governor of the State of Pennsylvania on the subject of a joint commission to re-survey said boundary line and establish permanent monuments; and communicate the result of such correspondence to the next session of the General Assembly; and if he should deem the same necessary, he is hereby authorized to employ some suitable person to personally examine said boundary line, in order to ascertain the necessary information respecting the same.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

JOINT RESOLUTION.

In relation to the continuance of Mary Ann Tipton and Jane Ingersol in the Blind Asylum as State pupils.

Resolved, by the General Assembly of the State of Ohio, That the board of trustees for the benevolent institutions be and they are hereby authorized to permit Mary Ann Tipton, of Delaware county, and Jane Ingersol, of Hamilton county, to remain in the Blind Asylum as State pupils, so long as the said trustees in their discretion shall deem necessary and proper.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 11, 1853.

JOINT RESOLUTION

In relation to the construction of a canal bridge on the lands of John Line in Butler county.

Resolved, by the General Assembly of the State of Ohio, That the board of public works are authorized to examine into the propriety of the construction of a bridge over the canal on the lands of John Line, in the county of Butler, and if justice require it, to construct such bridge.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

WILLIAM MEDILL,

President of the Senate.

March 12, 1853.

JOINT RESOLUTION

In relation to indexing the code of civil procedure, and for other purposes.

Resolved, by the General Assembly of the State of Ohio, That an index to the act to establish a code of civil procedure, the act defining the jurisdiction and regulating the practice of probate courts, and the act regulating the jurisdiction and procedure before justices of the peace and the duties of constables in civil cases, be published in the volume of general laws. That the clerk of the commissioners on practice and pleadings be directed to prepare the same, who shall be entitled to the same compensation as is provided by law for indexing the journal of the General Assembly: pro-

vided, that said compensation shall not extend beyond the fifteenth day of April, eighteen hundred and fifty-three.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 WILLIAM MEDILL,
President of the Senate.

March 12, 1853.

JOINT RESOLUTION

Instructing the Attorney General to institute proceedings in relation to land sales at Defiance Land Office, and for other purposes.

Resolved, by the General Assembly of the State of Ohio, That the Attorney General be, and he is hereby required to institute such judicial or other proceedings in the matter of the sales of lands made at the State land office at Defiance, Ohio, subsequent to the last day of December, one thousand eight hundred and fifty-two, as will cause such of said sales as were made contrary to law to be set aside, and the lands so sold to revert to the State.

And be it further resolved, That the Governor be, and hereby is requested to suspend the issuing of any deed or deeds for any land or lands sold at the State land office at Defiance, since the last day of December, eighteen hundred and fifty-two, the sales of which are in violation of the law of April sixteenth, eighteen hundred and fifty-two, as indicated by the report of the joint select committee, until such judicial or other proceedings are had as are contemplated by the preceding resolution.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
 GEORGE REX,
President of the Senate, pro tempore.

March 14, 1853.

JOINT RESOLUTION

Fixing the number of copies of laws and journals to be distributed, and to print the constitution with the laws.

Resolved, by the General Assembly of the State of Ohio, That the following number of copies of General Laws, passed and ordered to be printed at the present session of the General Assembly, and the following number of copies of acts of a local nature and resolutions passed and ordered to be printed, and of the Journals of each House, shall be distributed to the several counties of this State according to law.

| Counties. | General Laws. | Local Laws. | Journals. | Counties. | General Laws. | Local Laws. | Journals. |
|------------------|---------------|-------------|-----------|------------------|---------------|-------------|-----------|
| Adams | 169 | 20 | 15 | Stark | 269 | 33 | 28 |
| Allen | 150 | 16 | 12 | Summit | 262 | 28 | 25 |
| Ashland | 179 | 25 | 20 | Hancock | 256 | 30 | 25 |
| Ashtabula | 344 | 40 | 33 | Hardin | 185 | 19 | 16 |
| Athens | 266 | 35 | 30 | Harrison | 279 | 28 | 20 |
| Auglaize | 125 | 16 | 16 | Henry | 175 | 16 | 13 |
| Belmont | 262 | 25 | 22 | Highland | 344 | 24 | 18 |
| Brown | 231 | 25 | 20 | Hocking | 177 | 16 | 13 |
| Butler | 356 | 30 | 17 | Holmes | 205 | 25 | 20 |
| Carroll | 206 | 25 | 20 | Huron | 269 | 25 | 20 |
| Champaign | 312 | 24 | 20 | Jackson | 209 | 23 | 23 |
| Clark | 300 | 20 | 15 | Jefferson | 231 | 30 | 25 |
| Clermont | 247 | 30 | 25 | Knox | 244 | 32 | 24 |
| Clinton | 184 | 20 | 16 | Lake | 146 | 24 | 20 |
| Columbiana | 306 | 37 | 30 | Lawrence | 170 | 20 | 18 |
| Coshocton | 295 | 32 | 24 | Licking | 294 | 45 | 40 |
| Crawford | 235 | 23 | 18 | Logan | 196 | 30 | 25 |
| Cuyahoga | 331 | 35 | 30 | Lorain | 162 | 30 | 27 |
| Darke | 288 | 30 | 25 | Lucas | 156 | 25 | 20 |
| Defiance | 218 | 35 | 30 | Madison | 180 | 24 | 18 |
| Delaware | 209 | 24 | 20 | Mahoning | 226 | 30 | 25 |
| Erie | 181 | 17 | 15 | Marion | 189 | 20 | 17 |
| Fairfield | 256 | 30 | 24 | Medina | 259 | 30 | 28 |
| Fayette | 280 | 23 | 15 | Meigs | 295 | 25 | 20 |
| Fulton | 125 | 20 | 15 | Mercer | 160 | 16 | 16 |
| Franklin | 162 | 30 | 24 | Miami | 195 | 22 | 18 |
| Gallia | 233 | 25 | 21 | Monroe | 230 | 25 | 20 |
| Geauga | 190 | 35 | 27 | Montgomery | 275 | 30 | 25 |
| Greene | 175 | 20 | 16 | Morgan | 231 | 30 | 28 |
| Guernsey | 313 | 28 | 24 | Morrow | 225 | 28 | 24 |
| Hamilton | 625 | 60 | 50 | Muskingum | 375 | 45 | 40 |
| Paulding | 118 | 17 | 13 | Noble | 225 | 30 | 25 |
| Perry | 196 | 25 | 23 | Ottawa | 142 | 15 | 10 |
| Pickaway | 209 | 25 | 23 | Trumbull | 313 | 45 | 40 |
| Pike | 156 | 18 | 16 | Tuscarawas | 281 | 32 | 27 |
| Portage | 281 | 35 | 30 | Vanwert | 95 | 17 | 15 |
| Preble | 180 | 30 | 25 | Vinton | 125 | 20 | 20 |
| Putnam | 180 | 17 | 12 | Warren | 196 | 25 | 20 |
| Richland | 300 | 30 | 25 | Washington | 254 | 35 | 30 |
| Ross | 262 | 35 | 25 | Wayne | 259 | 30 | 25 |
| Sandusky | 184 | 30 | 24 | Williams | 186 | 25 | 20 |
| Scioto | 216 | 25 | 20 | Wood | 181 | 25 | 20 |
| Seneca | 219 | 30 | 25 | Wyandott | 212 | 30 | 30 |
| Shelby | 200 | 20 | 18 | | | | |

Resolved, That the constitution of the State of Ohio, with index, be printed as enrolled in the office of the Secretary of State with the General Laws, passed at the present session of the General Assembly.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

JOINT RESOLUTION

Relative to the death of the Hon. Peter Hitchcock.

WHEREAS, we have heard with the deepest concern of the death of the Hon. Peter Hitchcock, late the Chief Justice of the Supreme Court of the State: AND, WHEREAS, the deceased by his long, faithful and distinguished public services, has endeared himself to the people of Ohio; therefore be it

Resolved, by the General Assembly of the State of Ohio, That in the death of the Hon. Peter Hitchcock the State has lost an able jurist and faithful public servant, and society an honorable and useful citizen.

Resolved, That we deeply sympathize with the family of the deceased in their sad bereavement.

Resolved, That the Governor be requested to transmit a copy of the foregoing resolutions to the family of the deceased.

JAMES C. JOHNSON,

Speaker of the House of Representatives.

GEORGE REX,

President of the Senate pro tempore.

March 14, 1853.

JOINT RESOLUTION

Requiring the Secretary of State to furnish blank forms to school officers, and for other purposes.

Resolved, by the General Assembly of the State of Ohio, That the Secretary of State be, and he hereby is authorized and required to make out the necessary blank forms for the use and government of school officers, under the act to provide for the reorganization, supervision and maintenance of common schools, passed at this session; and, also, to procure the printing and half binding of a sufficient number of copies of said act to supply such officers with a copy of the same, including said blank forms in an appendix and to forward the same to the clerks of the court of common pleas

under the provisions of the act to provide for the distribution and safe keeping of the laws and journals, who are hereby required to distribute the same to the directors of the sub-districts, and other school officers in their respective counties.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

JOINT RESOLUTION

Relative to the petition of Solomon Channel, and others.

Resolved, by the General Assembly of the State of Ohio, That the Board of Public Works be, and they are hereby authorized and required to examine into the subject matter of the petition of Solomon Channel, and others, in consequence of the erection of the bulkhead at the north end of the South fork feeder, in the county of Licking, and report the result of such examination to the next General Assembly, and if upon examination of said claim, said Board shall find that there is no ground for complaint then the above named Solomon Channel, and others, shall pay the expense of such examination.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

JOINT RESOLUTION

Relative to a day of Thanksgiving.

Resolved, by the General Assembly of the State of Ohio, That the Governor be requested to designate some day of the present year to be observed throughout the State as a day of Public Thanksgiving, and that for the purpose of procuring uniformity in this matter he be required to correspond with the Governors of the several States of this Union upon that subject.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate pro tempore.

March 14, 1853.

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